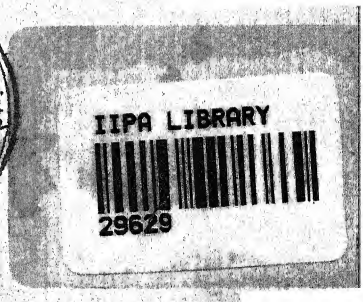
CASTE IN COURTS.

OR

Rights and Powers of Castes in Social and Religious matters as recognized by Indian Courts.

L. T. KIKANI,
Pleader.



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PREFACE.

In these days of rapid progress Caste questions very often arise and are discussed before caste meetings; and very often these matters are dragged into Courts either civilly or criminally. These matters are not a subject of legislation, and are not likely to be one in near future, and hence in such cases not only the Bench and the Bar, but the public at large have to depend upon cases decided by the highest Courts in India, and by the Privy Council in appeal from the decisions of those tribunals; but unfortunately these cases are scattered over hundreds of volumes of reported cases. It is thus desirable that these cases should be collected, properly grouped and published.

I have tried in this book to give a connected thread of the decisions on the subject which go to fix the principles and expound reasons for them. The introduction is designed to give an outline of the guiding principles of the various extensive branches of the subject with a view that public at large may avail themselves of them. The chapters deal with the subjects in fuller details with references to the authorities on the topic in question.

It is hoped that the book will be found to contain a complete digest of all the reported decisions on the subject in this country, upto April 1912.

My special thanks are due to my friend Mr. Nagji Nathu Ganatra, a pleader Rajkot C. S. who has thoroughly revised this book before it was sent to press, and also helped in going through proofs.

May 1912.
Rajkot C. S.

L. T. KIKANI,
Pleader.

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INTRODUCTION.

The caste means a race of men, the decendants from one common progenitor. There were originally four races amongst the Hindus; namely, Brahmin, Khatria, Vaisya and Sudra. They were so known by their karmas. The term also applied to men carrying on the same trade or profession. It also applied to men entering the same religious belief and to any religious sect which professed to be governed by traditional rules peculiar to itself. We see Mahomedans and Parsis bringing actions on account of expulsion from caste; therefore it is not confined to Hindus only.

The term caste in its judicial sense, denotes any well-defined native Community governed for certain internal purposes by its own rules and regulations. The term therefore applies to Hindus as well as to other communities. The Hindu community however consists the largest portion of Indian society, and the Hindus are subdivided into innumerable communities and classes; and therefore the largest class of cases affecting the internal economy of the castes which come in incidently before the Courts of justice for adjudication are cases relating to Hindu castes.

The caste being a self governing body for discharging certain mixed functions which are partly civil and partly religious or sumptuary, no member of it can maintain a suit in which a caste question is the principal question for inquiry, though there may be also other subsidiary questions requiring adjudication by civil Courts, and although those subsidiary questions are of purely civil nature. The test applied in such cases is, whether the Court by taking cognizance of the matter in dispute

would or would not be interfering with the autonomy of the caste. And the task of ascertaining what is or what is not a caste question has been very often proved to be a question of great difficulty.

The civil Courts are by Code of Civil Procedure empowered to take cognizance of suits of civil nature only. And there are many classes of suits held to be not of civil nature. The most important class is where the question to be adjudicated by the Court is a caste question. But a suit may involve a caste question, and may still be of a civil nature so as to be cognizable by civil Courts. The principle is that where the only or the principal question in a suit is a caste question, the civil Court will not entertain the suit. But when a caste question is a subsidiary question in a suit, and the principal question is of civil nature the Court will take cognizance of the suit. Claims between rival factions of the same caste to common caste property, claims to leadership of caste, claims to require voluntary offerings and honours and presents to be paid to particular members of the caste, claims to officiate as priests against the consent of the caste, claims to compulsory invitations to dinners &c. are held to be caste questions.

Therefore where a caste question is not the principal question in the suit, but only a subsidiary question, and the principal question is of a civil nature, and further the principal question which is of a civil nature, cannot be determined without deciding upon the caste-question, the civil courts will in such cases decide upon the caste question, whether it may arise in the form of a question as to religious rites or ceremonies, or a question as to religious temples, tenets, or a question as to right to perform certain religious services, or a question as to the relations of the divisions and members of a caste, or a question as to caste usage, or practice

or rule &c. In all such cases, the determination of the caste question is merely incidental to the decision of the principal question of a civil nature, such as a question as to right to property or to office.

In the Bengal Presidency suits for restoration to castes were made expressly cognizable by Bengal regulation III of 1793, and were often taken cognizance of by the ordinary Courts. But even there it was held that the courts could not compel Hindus against their will to ask other Hindus to their houses or their entertainments. Nor will a suit lie to enforce an agreement made by a person to belong for ever to a particular samaj or union or to recover damages for its breach. The rule against the maintenance of suits relating to caste rights is based sometimes on the impracticability of enforcing them. Thus a decree declaring a person's right to the membership of a society is incapable of execution, as the effect of such a decree would be to require that other person to accept plaintiff's invitation, and to partake of his food, though against their will, and that they in their turn must give him similar invitations and dine with him, whether they like to do so or not.

In the Bombay Presidency a different view is taken of the caste questions. Section 21 of the Bombay regulation II of 1827, in giving civil courts a cognizance generally of all suits and complaints of a civil nature, expressly provides that, no interference on the part of the court in caste question is hereby warranted, beyond the admission and trial of any suit instituted for the recovery of damages on account of the alleged injury to the caste and character of the plaintiff arising from some illegal act or injustifiable character of the other party. A suit for damages for omission by a casteman to send a customary funeral present is not cognizable by civil courts there. The slight involved in

refusal or omission being regarded merely as the result of a breach of social etiquette, with which the caste is exclusively competent to deal. Nor does a suit lie for damages for the refusal to a person of an invitation to a *quasi* religious ceremonial on the ground of having violated a caste rule relating to merely sumptuary matters, framed by the majority of the caste committee to which one was not a party and had never yielded assent. The meaning of the Bombay regulation is only that the autonomy or the internal economy of a caste is not to be interfered with by the courts, and not that no possible matter of litigation in which a question of caste usage, right, or privilege, may arise can be taken cognizance of. Accordingly a suit for the declaration of an exclusive right of entering and worship in the sanctuary of a temple is one which the courts must guard, as otherwise all high caste Hindus would hold their sanctuaries, and perfrom their worship, only so far as those of the lower caste chose to allow them. But a suit by certain members of the caste as such, for propetry belonging to the caste against any person holding it for the caste will not lie. Nor a suit for property will lie on behalf of certain seceders from the caste against persons who continue to belong to it and retain charge of it. But a suit will lie by the priest of a caste against certain members, who borrowed certain caste utensils from him with a promise of returning them, and refused to return the same. Because castes are capable of property, and are entitled to protection in their enjoyment. It is no interference in a ctste question to uphold by the sanction of the Gourt's decree, the right of the majority of the caste to regulate the user of the caste property, and to restrain the recalcitrant member from acting in opposition to a regulation laid down by the majority as to such user. The civil court does not decline to give

effect to the expressed wishes of the majority of a caste as to the management and custody of the caste property, which the majority seek to set at nought by reason of the suit involving a caste question.

So far is the principle of the recognition of the autonomy of the caste carried in the Bombay presidency, that even suits relating to caste offices are not allowed to lie there when they involve any caste questions. The same view is taken of the autonomy of the caste in the Madras Presidency. Civil courts are accordingly precluded from interfering in matters relating to caste customs, over which the caste or the ecclesiastical chief has jurisdiction and exercises the same with due care and in conformity to natural principles of justice and the usage of the caste.

Suits brought to regulate the ritual of a pagoda are deemed not to be of a civil nature. Suits for mere observances of religious honours have been held to be not cognizable by civil Courts, on the general principle that it is for those who profess any form of religion to adopt such ritual as they think fit, and to make and enforce such rules as may be necessary to secure its due observance. But the suits involving a right to property or to an office have been allowed to lie even though they involved questions as to rituals.

The word property will apparently include a public right, and a suit for the exercise of such rights is allowed to lie in civil courts even though it involves the decision of religious questions. But the property in order to give a right to sue in civil courts must be of an appreciable value, and a person cannot by merely affixing a money value, give himself a right to sue which he otherwise does not possess. Mere ceremonial gifts of rice, cocoanuts and vida and of a price of venison on

occasions of worship &c, even though denominated emoluments, are mere symbols of recognition, and marks of respect of and to the holders of the *man*, and not property, and their inclusion in a claim will not make it of a civil nature. This will be *a fortiori* so, if the claim is to receive any such things only in priority to some other persons, as the ceremonial value of the offerings will be the same, whether they were received before or after.

For a long time courts recognized the office of a family priest ; and it was often held that a Jajman could not discard a purohit, if faultless, even if appointed by himself, and that the purohit could recover damages both from the priest who wrongfully officiated at a marriage, and from the person who employed him. The Sadar Adalat of Bengal changed this view as early as 1857, when it held that the courts could not try the question of faultlessness, and must leave it to the Jujman. It is quite a settled law now at least in upper India that there is no office of purohit recognized in law, and that a priestly office with emoluments attached to it is inalienable. A Jujman may select and dismiss his purohits, and may employ any one he likes for the performance of any services he may desire to have performed, and pay any fees to any one whom he may choose to pay. The same view is taken in the Madras presidency. As a general rule, a mere personal right to receive presents and ceremonial offerings of secredotal respect, as apart from one's connection with the management or control of any pagoda or its property or funds is not a right to an office.

The heritable character of the office of the family priest appears to be still recognized by the Bombay High Court, even though the fees payable by Jujman should not be fixed, and be entirely in the discretion of the person paying. But where the ceremonies were optional, if they were performed, the person entitl-

ed of hereditary right to perform them, was entitled to be paid his fees at an average or reasonable rate, whether he was employed to perform them or not ; and it could not matter whether they were performed by another Brahman or by a person who called himself a priest, or any one else in the caste. There is equally an invasion of his privilege against which the village priest is entitled to be protected by an award to him of his fees as against one who gets the ceremonies performed by another. And a right of the legitimate holder of an office to recover from a usurper any fees taken by the latter is established. The burden of proving that the Joshi of the village was not entitled to officiate and to take fees in the families of any particular caste, lay upon the person asserting the exemption. But an injunction would not be granted, which would have the effect of forcing upon any section of the Community, the services of a priest, whom they are unwilling to recognize and forbidding them to employ a priest whose ministrations they desire.

It is a general rule, however that if the fees be paid to a person as the member of a collective body of purohits of which he is the unit, the other members may claim their share of the receipts as money had and received. The rule is that if a Jujman or a party, in the exercise of the liberty allowed to him, pays a sum as fees to an individual, so as to show that they were intended for the individual, no claim can be preferred by others, though they may be joint heirs in the family purohitship, to the property so received but that, if the fees be paid to a person only as a member of the collective body of which he is an unit, the claim is admissible, and should be decided in accordance to the rules, by which ordinary claims of inheritance are decided. Effect may also be given to a contract, or any other relation existing between two or more purohits, binding them to divide collec-

tions between themselves.

Rights connected with personal offices are however incapable of transfer; similarly rights to officiate at funeral ceremonies are also incapable of transfer. And the office of family purohit does not appear to be recognized as alienable even in Bombay Presidency.

The law appears to recognize local offices, offices connected with a certain temple or locality, which are essentially distinct from personal offices. A suit for fees voluntarily paid to one man will not lie on the part of another, where there is neither contract nor tangible property ; but, when the parties claim the collections of a shrine either in right of property in the place or of lawful and established office attached to it, the suit will lie. The suit will therefore lie for the exclusive right to the privilege of administering purohitam to pilgrims resorting to certain places of pilgrimage, or to receive fees from pilgrims resorting to a certain shrine. The suit will also lie for a declaration of a person's right to perform the duties of a pujari and to receive the proceeds of a mandir. Because the right of a person to perform the worship of an idol is property. The joint owners are entitled to perform the worship in turn. And the refusal to deliver up an idol so as to prevent the priest from performing his turn of worship, gave the aggrieved party a right to sue for damages. And a suit for a declaration of a person's right to officiate in alternate years, as priest in a temple and to receive the offering of the idol will lie in Civil Court.

Such an office though partible is not alienable. It is not such property as might be attached and sold in execution of a decree; otherwise it might be purchased by a Mahomedan or Christian who would be both unwilling and incompetent to perform the service of the idol connected with it. The same reason would

militate against an unrestricted right of alienation by private sale or gift. The effect of an improper alienation would sometimes be such as to defeat the object of the endowment or be even inconsistent with the presumed intention of the founder. These objections would not apply to an alienation to a member of the founder's family in the line of succession. Therefore the sale of a hereditary priestly office was upheld by the Bombay High Court, where the purchaser was the next in succession. And a devise of an office by will to a possible heir is held by the same High Court to be valid; since the alienation of a priestly office is open to objection only on the ground that it would be contrary to the founder's intention that the office should pass out of his family, and that it would be incompatible with the due performance of the duties of the office that it should be held by a person of different religion or caste, then, there would appear to be no reason why an alienation should not be upheld, which is made in favour of any person standing in the line of succession, and not disqualified by any personal unfitness.

One of the chief characteristics of a recognizable office is that it involves a claim to property or money perquisites. The ordinary test of an office is therefore, whether there is any specific pecuniary benefit, however small, attached to it, and claimable in the nature of wages. The right to such benefit is a question which the civil courts can take cognizance of. But the office need not have emoluments attached to it as a rule. And where a right to a particular office in a temple is established, the right should be protected by processual remedies, even though no loss of specific pecuniary benefit be established. Dignity and privileges connected with an office are not identical with office, and a suit for them will not lie, unless they involve a claim to property.

The judicial powers of the caste must be exercised subject to certain conditions, demanded by the requirements of the natural justice, when the penalty imposed affects the civil rights of the offender. But if the penalty be in the nature of social ostracism merely, and does not touch the legal rights of the casteman civil Courts cannot review the action of the caste, nor interfere with the case on the merits. And the same principle applies even though civil or legal rights are affected, provided the caste subjected the offender to punishment after giving him an opportunity of explanation, and acted bona fide and according to caste usages. And the penalty cannot extend beyond the imposition of a fine, or social ostracism, or at the most excommunication since even the extreme penalty of excommunication from caste, which few have courage to face, is recognized by courts, unless the excommunication was wrongful. Where the caste acts *bona fide* and proceeds regularly according to custom, and an opportunity is allowed to the offender of explanation, the Civil Courts have no jurisdiction to interfere with its action or examine the question of excommunication by considering the evidence upon which it was based. The result of excommunication may be deprivation of social rights, viz., the right of worshipping in a temple, or managing caste properties, and a Civil Court will, in a suit by the caste, restrain the defaulting member by an injunction from the exercise of that right, or in a suit by the defaulting member for a declaration that he is entitled to such right, non suit him, provided the resolution, excommunicating a member of the caste, was passed according to the usages of the caste, and after giving the offender sufficient opportunity to vindicate his conduct, and the resolution was duly notified. In considering the validity or otherwise of the resolution of the caste, the Court will have to consider

whether there was any caste rule or usage, of which the plaintiff has committed a breach ; or whether such rule or usage is *ultra vires*, or against public policy, or whether the plaintiff has in fact committed a breach of the existing rule or usage of the caste, or whether there was *bona fide*, but a mistaken belief that the plaintiff had committed a caste offence, whereas as a matter of fact, he had not, and whether the resolution was passed after giving the plaintiff an opportunity of explanation.

However a custom according to which a member may be expelled, although he had no opportunity of meeting the charge against him is not reasonable and of no force. Because the maxim *Audi alterem partem* contains a fixed painciple of justice. It prevails in all countries subject to British rule. It is not confined to public Courts of justice, but applies to all tribunals public or private, of every kind, which are vested with or assume the power to decide on the conduct or rights of the parties. The caste institution is not above or outside the law, the usages and customs of caste exist only under and not against the law. The rules of the caste consist partly of resolutions passed from time to time, but for the most part of usages handed down from generation to generation. The caste is not a religious body though its usages, like all other Hindu usages, are based upon religious feelings. In religious matters strictly so called, the members of the caste are guided by their religious preceptors and their spiritual heads. In social matters they lay down their own laws. Sumptuary laws are laws that govern social matters in one aspect, and like all other social laws are liable to be changed from time to time.

Caste meetings are not held as regular Courts. The procedure is not the same as is adopted in Courts of law. The charge is not regularly preferred by some one against the accused

for acting in contravention of some caste rule or regulation or usage as is done in Courts of law. It is not necessary that the members of the caste who give evidence are debarred from sitting in judgment against the offender. The same member may act as a witness and a Judge, though that procedure cannot be allowed in Courts of law. This procedure is allowed, for the caste has to regulate the conduct of its own members. Therefore different set of principles must apply to caste meeting than those obtained in Courts of law. But this jurisdiction is confined to matters which interest its members, and which are indispensable for regulating the conduct of the caste. Even there the caste assemblies are restricted with certain conditions, such as :—(1) A caste must proceed according to caste usage, and must exercise its powers with due care and in strict conformity with caste custom; (2) It must be ready to give opportunity to the person complained of for explanation; (3) It must act *bona fide*, and must not be influenced by malice. Where the above said conditions are complied with, the civil Court has no jurisdiction to review the action of the caste, or to examine the question on the merits.

Civil Courts have no jurisdiction to inquire into the rules of the caste that confine the enforcement of the same to social caste sanctions, such as deprivation of *manpan* invitation or invitation to dinner, &c. Because caste usages only entitle a caste man to receive such privileges, and the caste is the only tribunal to which a caste man, deprived of those privileges, can resort. But civil Courts can inquire into the nature of such rule, and determine, whether the caste can validly pass the rule, in case where the rule of the caste deprives a casteman, guilty of the same, of property or legal right.

The result of the excommunication may be a deprivation of

social privileges. Here the Court has no jurisdiction because there is no cause of action even though the plaintiff may allege that he has not been heard in defence or that his excommunication has been for the breach of a rule which either never existed or which the plaintiff in fact never violated. The question is entirely a caste question within the Bombay regulation II of 1827, section 21, clause I. But if the result of the excommunication is to deprive a man of his civil rights, a civil Court has jurisdiction to entertain a suit brought to set aside such excommunication as illegal, and to inquire into the merits of the case. But here also the jurisdiction is limited. The Court can inquire into whether the order of excommunication was passed *bona fide*, after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorized by caste to pass it. Whether the order was in accordance with caste usage or rule, and for an offence against that usage or rule, which the man excommunicated did as a matter of fact commit. If these conditions are fulfilled the Court must hold that the caste acted within its powers as a domestic tribunal, with whose jurisdiction and discretion the Court will not interfere. But the civil Court has jurisdiction to inquire here from the point of view of the caste, not of the Court, into reasonableness or justifiable character of the rule for the breach of which the order of excommunication was passed.

Again, suits claiming relief for loss of caste and character are in the nature of suits for damages for defamation. The civil Court's jurisdiction in such cases is subject to the law that a libel to a man's position in caste can give him no right to claim damages from any of his caste fellows if they have acted *bona fide* for the protection of their caste interests in discharge of

their caste duty.

As in the case of caste rules, so in the case of caste resolutions, a civil Court has no jurisdiction to inquire into the validity of the resolutions, so long as they do not affect civil rights. The decision of those who represent the caste is final, in the exercise of religious and social jurisdiction, so far as civil Courts are concerned. But if civil rights are affected, the civil Courts have jurisdiction to inquire into the validity of the resolution, whether it be the resolution of a caste, or the resolution of any other community, or the resolution of a private association, or the resolution of a club, or the resolution or the decision of the ecclesiastical chief of a caste. In such cases the Court has to ascertain (1) whether there was any caste rule or usage of which the plaintiff has committed a breach, (2) whether such rule or usage is *ultra vires*, or against public policy, (3) whether the plaintiff has committed a breach of the rule or usage, and (4) whether the resolution was passed after giving plaintiff an opportunity of explanation.

CASTE IN COURTS.

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Chapter I.

DEFINITION OF CASTE.—A caste is a voluntary association and is considered entitled to frame rules and punish members of the Caste who transgress those rules by social sanctions. It means in its primary sense a race of men. It also applies to men entering the same religious belief, and to any religious sect which professes to be governed by any traditional rules peculiar to itself. Castes are recognized in law as corporations with civil rights and an autonomy suitable to the purposes of their existence. Pragji vs. Govind. 11 Bom. 534. The caste is a social combination, the members of which are enlisted by birth, not by enrolment. Its rules consist partly of resolutions passed from time to time, but for the most part of usages handed down from generation to generation. The caste is not a religious body, though its usages, like all other Hindu usages, are based upon religious feelings. In religious matters, strictly so called, the members of the caste are governed by their religious preceptors and their spiritual heads. In social matters, they lay down their own laws. Raghunath vs. Janardhan. 15 Bom. 599 at 611. Caste is a voluntary association of persons for certain purposes. It is open to a person to leave it. But every Hindu, at any rate

the majority of them are born into some caste or other. Their status and their relations towards the other castes are defined and fixed by the caste to which they belong. Their matrimonial relations, their laws of inheritance and generally their religion and social rights and duties also are determined by their castes. Coopoosami Chetty *vs.* Duraisami Chetty 33 Mad. 67 ; at 69.

The term "Caste" in Bombay Regulation II. of 1827 is not necessarily confined to Hindus. We find Parsees and Mahomedans bringing actions on account of expulsion from caste. Bhiwa *vs.* Vittaram. (1857) 4 Bom. S. D. A. Reps. 118, at 123. In Abdul Kadir *vs.* Dharma. 20 Bom. 190, Sargent, C. J., observed that 'Caste' comprised "any well-defined native community governed for certain internal purposes by its own rules and regulations," and that it was not therefore confined to Hindus only.

WHAT ARE CASTE QUESTIONS.

A caste question is one which relates to the matters affecting the internal autonomy of the caste and its social relations. Claims between rival factions of the same caste to common caste property, claims to leadership of caste, claims to require voluntary offerings and honours and presents to be paid to particular members, claims to officiate as priest against the consent of the caste, claims to compulsory invitations to dinners, &c. are held to be caste questions. Appaya *vs.* Padappa. 23 Bom. 122 at 130.

To determine whether a particular question is a caste

question, the test which ought to be applied is that applied by Sargent C. J. in Murari *vs.* Suba, 6. Bom. 725, viz. "Would the taking cognizance of the matter in dispute be an interference with the autonomy of the caste? That is, will the Court be deciding a question which the caste as a self-governing body is entitled to decide for itself?" If so, the question is a caste question. If not, the Civil Court has jurisdiction to entertain the suit." (see also Lalji *vs.* Walji. 19 Bom. 507 at 522.) Autonomy is rather a large word, and it means that where rights to property are not involved all matters of internal management must be left to the decision of the caste. Jethabhai Nursey *vs.* Chapsey Cooverji, 34 Bom. 467 at 481.

So far is the principle of the recognition of the autonomy of the caste, and of non-interference with the caste questions carried in the Bombay Presidency, that even suits relating to caste offices are not allowed to lie there when they involve any caste question. The leading case on the point is Ambu *vs.* Khanu, 6 Bom. H. C. R. A. C. J. 19 (note) in which a man of Weaver caste sued to obtain a declaration of his right to be recognized as the head and to receive from certain other members of it, on certain public occasions, the privilege and precedence accorded to the holder of that office, notwithstanding their election of another person to the office; and a Division Bench of the Bombay High Court held that in declaring the right claimed, the Court will be called upon to interfere with the autonomy of the caste; and S. 21 of Regulation II of 1827

appears to have expressly prohibited the interference in such matters. The decision was followed in Murar Duga *vs.* Nagria 6 Bom. H. C. R. A. C. J. 17, in which the plaintiffs sued to recover from the defendant certain fees which they claimed as chief men of the caste, on occasion of the marriage ceremony of any member of the caste. These cases decided that the right to office of dignity in a caste was a caste question, and a suit would not lie against such members of the caste as should refuse plaintiffs the privileges belonging to that dignity.

Similarly caste may pass a resolution depriving one of its members of *man-pan* invitation or invitation to dinner, or to *munj* or other ceremonies for an alleged breach of a caste rule; because the right to such an invitation is not a legal right. Joy Chander Sirdar *vs.* Ramchurn. 6. W. R. 325. It is a social privilege which caste usages and caste usages only entitle a caste man to receive; and the caste is the only tribunal to which a caste man deprived of this privilege, can resort. It is a caste question unconnected with property or legal right. As long as a caste in passing a rule confines the enforcement of it to social caste sanctions, and does not seek to deprive a man of property or legal right for disobeying it, the Court has no jurisdiction to enquire into the nature of the rule. It might pass a rule to forbid the wearing of European clothing or the departure from the recognized head dress, or to compel its members to dwell in cadjan thatched houses, and so long as it only enforced its rule by refusing to ask the caste man guilty of

its breach to dinner, he would be without redress, saving in a caste tribunal. It would be a caste question. To award damages to plaintiff who complained of the enforcement of such rule, would be, in effect, to dictate to the caste what rule it shall and what it shall not lay down for its guidance. Ragunath *vs.* Janardhan, 15 Bom. 599. And a member of a caste is not entitled to any remedy in law if other members refuse to go to his house on occasion of death in his family, and to assist in removal of dead body, though they may have in so doing broken the rule of the caste. If the defendants are in fault at all in breaking the social rule of the caste, the plaintiff must go to the caste for redress. There is no question of property involved, nor the defendants have by their acts slandered the plaintiffs, so as to give him a right to sue for damages. (Kanji *vs.* Arjun. 18 Bom. 115). Therefore the civil Court cannot compel Hindus, against their will, to ask other Hindus to their houses or entertainments, Joy Chander Sirdar *vs.* Ram Churn. 6 W. R 325. If a person accepts invitation at his neighbour's house and afterwards fails to attend, he cannot be held liable to recoup the entertainer for the price of food unconsumed on account of his absence. Kalai Haldar *vs.* Shaikh Kyamuddi. 23 W. R. 417. It has also been held that a suit will not lie to compel certain barbers, on the ground of custom to render certain services (shaving, paring off the nails &c). Raj Kisto Majee *vs.* Nobaee Seal. 1 W. R. 351.

Similarly an agreement among caste men for payment of caste debts from certain caste funds is not cognizable by

civil Courts, because it is an arrangement come to between members of the caste for purposes of paying of debts of the caste out of certain contributions to the caste funds, and as such involves a caste question. Abdul Kadir *vs.* Dharma. 20. Bom. 190.

Thus suits for enforcement of rights relating to castes are not always cognizable by civil Courts. In the Bengal Presidency suits for restoration to castes were made expressly cognizable by Bengal Regulation III of 1793, which enacts that the civil Courts shall take cognizance of questions of caste, succession, or marriage, and were often taken cognizance of by the ordinary courts. Gopal *vs.* Gurain. 7. W. R. 299. But even there it was held that the courts would not compel Hindus against their will to ask other Hindus, to their houses for entertainments. Joy Chunder *vs.* Ramchurn. 6 W. R. 325. In 1859 a suit was held to lie for declaration of the plaintiff's right to be admitted to the membership of a *dal* or society. Ramnath *vs.* Ram Lochan. S. D. A. Beng. 535. But this appears to have been negatived in Sudharam *vs.* Sudharam. 3 Beng. L. R. A. C., J. 91, in which the question, however, was not of an exclusion from caste, but from a society of character partly religious and partly social. In Jagannath *vs.* Akali, 21 Cal. 463. Banerji and Rampini J. J. observed that the English cases of expulsion from clubs or voluntary associations were quite different from those of exclusion from caste or religious fraternities, as people were free to join the former or not, and any one who joined any such association

might well be taken to be bound not only by its general rules, but by any special orders made by its members with regard to him in accordance with those rules; while in regard to the latter, as a rule, people did not join them as a matter of choice but as a matter of necessity "they are born in their respective castes or sects, and consequence of exclusion from caste or sect are far more serious and affect a person's status in a far greater degree than those of expulsion from club. The protection of Courts of justice, even though presided over by judges of different religious persuasions, against expulsion seems, therefore, to be much more needed in the one case than in the other." In Haronath *vs.* Nitto Parmanik. 22 W. R. 517 it was held that a suit will not lie for the specific performance, and even for damages for breach, of a contract entered into between different Samajes of the same caste to intermarry and eat with each other, as such a contract has reference to religious and social customs. Nor will a suit lie to enforce an agreement made by a person to belong for ever to a particular Samaj or union, or to recover damages for its breach. Nitai Shaha *vs.* Shubal. 11 Beng. L. R. S. N. 4.

In the Bombay presidency, however, a different view was taken of the caste question. Section 21 of Bombay Regulation II of 1827 expressly provides that no civil Court has jurisdiction to take cognizance of caste questions. This Regulation applies to the Mofussil of Bombay. It runs as follows :—

The jurisdiction of civil Court shall extend to the

cognizance of all original suits and complaints between natives and others (not British born subjects) respecting the right to moveable and immoveable property, rents, Government revenues, debts, contracts, marriage, succession, damages for injuries, and generally of all suits and complaints of a civil nature, it being understood that no interference on the part of the Court in *caste questions* is hereby warranted beyond the submission and trial of any suit instituted for the recovery of damages on account of the alleged injury to the caste and character of the plaintiff arising from some illegal act or unjustifiable conduct of the other party.

The meaning of the above section is that the internal economy of the caste is not to be interfered with by the Court, not that no possible matter of litigation in which a question of caste usage, or right, or privilege, may arise can be taken cognizance of. Anandrav *vs.* Shankar Daji. 7 Bom. 323. The Regulation does not say that the civil Court is not to take cognizance of any case in which a question of caste rule, or of a membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. What it says is that no interference on the part of the Court in caste questions is hereby warranted in large classes of cases in which questions of caste law must incidently arise from time to time. That is, the section only prevents interference as is likely to affect the autonomy of the caste tribunals. But it provides a remedy in the matter of alleged injury to caste or character in the

shape of damages, that is, the Courts have jurisdiction when the injury is due to the illegal or unjustifiable character of the other party. Then it is apparent that suits for enforcement of rights relating to castes are not always cognizable by civil Courts, but the civil Courts may discuss and deal even with a caste question where the membership and the character of the member have been unjustly injured. Pragji *vs.* Govind, 11 Bom. 534 at 536. And a suit for damages for omission by a caste man to send a customary funeral present is, thus, not held to lie in civil Court. Mayashankar *vs.* Harishankar. 10 Bom. 661. The slight involved in the refusal or omission being regarded merely as the result of a breach of social etiquette with which the caste is exclusively competent to deal. (1)

The next enactment on the subject is s. 11 of the Code of Civil Procedure, Act XIV of 1882. The corresponding section 9 of the present code, Act V of 1908 runs as under: —

The Courts shall, subject to the provisions hereinafter contained, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation. A suit in which a right to property or to an office is contested is a suit of a civil nature,

(1) See. also case of Barber Moti Nagji v. Barber Jeram Aja &c., 13 K. L. R. 235 in which it is held that section 21 of Bombay Regulation II of 1827 would apply to civil Courts in Kathiawad.

notwithstanding that such rights may depend entirely on the decision of the question as to religious rites or ceremonies.

"*Or impliedly barred.*" These three words are added to the explanation to the section 11 of the Code of Civil Procedure, Act XIV of 1882.

The section accordingly provides that civil Courts shall try a suit *only* if the suit is of a civil nature. There are many classes of suits held to be not of a civil nature. The most important class is where the principal or only question in a suit is a caste question. Such suits have repeatedly been held not to be of civil nature, and therefore, not cognizable by civil Courts. But when the caste question is not the principal question in a suit, but only a subsidiary question, and the principal question is of a civil nature, and where the principal question which is of a civil nature cannot be determined without deciding upon the caste question, the Court in such cases decides upon the caste question. The explanation to section 9 of the Civil Procedure Code contemplates cases in which the principal question is of a civil nature, *e. g.* a question as to a right to property or to an office.

As to those Courts to which the Code of Civil Procedure does not apply, there are other enactments, of which the principal ones are given below :—

(1) Act III of 1893 s. 12 provides for Civil Courts of Madras Presidency.

S. 12. The jurisdiction of a District Judge or a subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a *civil nature*.

The jurisdiction of a District Munsif extends to all *like suits and proceedings*, not otherwise exempted from its cognizance, of which the amount or value of the subject matter does not exceed two thousand five hundred rupees.

(2) Act XVI of 1885, s. 7 provides for civil Courts in the Central Provinces.

S. 7. Except as otherwise provided by any enactment for the time being in force, the Court of the Commissioner and the Court of the Deputy Commissioner should be competent to try original *Civil suits* without limit as regards the value.

(3) Act XII of 1887 s. 18 provides for civil Courts in Bengal, North-Western Provinces and Assam.

S. 18. Save as otherwise provided by any enactment for the time being in force the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of S. 15 of the Code of Civil Procedure, to all original suits for the time being *cognizable by civil Courts*.

BAR AS TO CASTE QUESTIONS APPLICABLE TO CLASSES OTHER THAN HINDUS.

In Sayad Hashim *vs.* Husseinsha, 13 Bom. 429 it was held that Bombay Reg. II of 1827 section 21 did not ap-

ply to suits between Mahomedans, and a dispute as to the right to an office like that of *khatib* was not a caste question within the meaning of the section. And in Advocate General of Bombay *vs.* David Heim Devaker, II Bom. 185 Scott J. observed that the Beni Israelite community was not a caste within the meaning of the Regulation. However in Abdul-Kadir *vs.* Dharma, 20 Bom. 190 the question was with regard to appointment by defendants and other Mohala people of the plaintiff as *Adhikari* (headman) of the *jamat* (caste); and Sargent C. J. held that the term caste in the Regulation was not confined to Hindus, but comprised any well defined native community governed for certain internal purposes by its own rules and regulations. That is a distinct recognition by the Bombay High Court of the existence and legal validity of the institution of caste, in some form or other among Mahomedans. Therefore if a Mahomedan belonging to such community or caste marries a woman also belonging to it, the contract must be presumed, in the absence of evidence to the contrary, to have been entered into upon the faith that, as both are Mahomedans of that caste, both shall continue as such so long as they live as husband and wife. And where the plaintiff, an excommunicated member of the Mussalman Kharva community of Broach, sued his wife for restitution of conjugal rights, the facts were that at the time of their marriage, the parties were members of the same caste; but subsequently the plaintiff was excommunicated from his caste, the wife contended that she should not be compelled

by the Court to go and live with him as his wife before the plaintiff was re-admitted into the caste ; held, upholding the contention, that at the time of marriage she was not only a Mahomedan by faith, but also a member of the Kharva community ; occupying *that status*, she married the plaintiff. It was, therefore, of the essence of the marriage contract that they married because they were members of the particular community, and they must be regarded as having entered into the marital relation on the bases of that status. Bai Jina *vs.* Kharva Jina Kalia, 31 Bom, 366.

CHAPTER II.

JURISDICTION OF CASTE.

A caste being a self governing body with civil rights and an autonomy necessary for its existence, the power to make rules for the guidance of its members, and to punish such of them as act in contravention of those rules is necessarily vested in it. Thus it has an inherent power to make rules or regulations to suit its requirements, and to sit in judgment upon members who contravene those rules, or act in contravention of recognized usages of the caste. It has also jurisdiction to impose penalties upon defaulting members of the caste. But this jurisdiction can be exercised only in the case of a member of the caste, and in matters relating to caste questions.

A caste is a voluntary association of persons for certain purposes. It is open to a person to leave it. But every Hindu, at any rate the majority of them are born into some caste or another. Their *status* and their relations towards the other castes are defined and fixed by the caste to which they belong; their *matrimonial* relations, their laws of inheritance and generally their religious and social rights and duties also are determined by their caste. Many of these duties are only of imperfect obligation and not legal. A person cannot be deprived of the membership of the caste except in accordance with caste usage. The caste as a body, or the majority of them, may, no doubt, expel him, but if they do so without giving him an opportunity of explanation, the civil Courts will interfere. Krishnasami *vs.* Virasami, 10 Mad. 133. Their procedure must be in accordance with caste usages and excommunication must not be opposed to natural justice. A man may be excommunicated or otherwise punished for a caste offence. But that jurisdiction must be exercised only by the caste, and "with due care and in conformity to the usage of the caste." If the caste by a majority arrive at a certain conclusion, it would be intolerable, to allow a few *dissentients* to circulate defamatory statements about a person, because they believe that in a caste dispute a wrong decision is arrived at. Thiagoraya *vs.* Krishnasami, 15 Mad. 217. The caste may delegate its power in respect of caste offences, wholly or in part to a *Raja*, as in the case of Vallabha *vs.* Madusudanan, 12 Mad. 495, or to a *Guru*, as

in the case of Ganapati Bhatta *vs.* Bharati Swami, 17 Mad. 222. see also, The Queen *vs.* Sankara, 6 Mad. 384. If the majority of the caste had accepted a widow remarriage as valid, there would have been no need to take the consent of the *Guru.* In such cases it would be in accordance with the caste usage that any purely caste offence should be inquired into and dealt with by the *Raja* or *Guru* to whom the power is delegated. It is not for a civil Court to impose an ecclesiastical head on any caste or any member of the caste. It is entirely within the option of any individual member of a caste and therefore also within the option of the caste whether he or they will submit to the Guru or not. Tholappala Charlu *vs.* Venkata Charlu, 19 Mad. 62. But so long a person continues to be a member of the caste he submits to its rules and traditions and to the jurisdiction of the caste or the *Guru,* to whom the power may have been delegated, to inquire into his conduct so far as caste offences are concerned. Cooppoosami chetty *vs.* Durai Sami chetty, 33 Mad. 67.

Thus a caste may frame rules for the management of its affairs, and for the guidance of its members, and civil Court has no jurisdiction to inquire into the validity of the rule, provided the punishment for its breach is limited to social caste sanctions. Raghunath *vs.* Janardhan, 15 Bom. 599. But if the punishment inflicted by the caste affects civil rights of a member, the civil Courts have jurisdiction to inquire into the nature of the rule and the authority of the caste to pass it.

It is this immense power a caste enjoys to perpetuate its ancient customs and on the basis of ancient traditions to regulate the internal autonomy of its members that gives to the caste system an interest and importance. The Court will not interfere with the jurisdiction and discretion of the caste as regards its internal purposes and management with reference to which it is its own master to frame rules and regulations. The Court will, however, interfere in favour of any individual member of the caste against any other member or members of it, where the Court is asked to give effect to any rule, resolution or usage of the caste, if the right claimed in virtue of such rule, resolution or usage is a civil right cognizable by the civil Court. In giviug relief in such cases, the court so far from interfering with the autonomy of the caste or encroaching upon its jurisdiction as to its internal affairs, recognizes them by giving effect to its rule, resolution or usage. Thus there is nothing immoral in a caste custom by which divorce and remarriage are permissible on mutual agreement, on one party paying to the other expenses of the latter's original marrige. Sankaralingam *vs.* Subban, 17 Mad. 479. A question arose as to the jurisdiction of the Court to interfere in the internal management of the caste. The caste had passed a certain resolution as regards the feasting of Brahmins by the caste. The plaintiff sought to prevent the defendants from using the caste oart and vessels contrary to the resolution. It was held that the Court had jurisdiction to interfere for the purpose of giving effect to the resolution

of the caste, and to pass a decree in accordance with it. Lalji Shamji *vs.* Walji Wardhman, 19 Bom. 507. Similarly in Pragji Kalan *vs.* Govind Gopal, 11 Bom. 534, West J. Said, "The Civil Courts may discuss and deal even with a caste question, where the membership and the character of the member have been unjustly injured. To take evidence of the customary law and the vote of the majority as given effect to by that law, is not to interfere in caste matters. It is simply to recognize the existence of the castes as corporations with the civil rights and an autonomy suitable to the purposes of their existence."

If a caste expels a member of it from its fold, the Court has no jurisdiction to give him relief by decreeing that the caste shall treat him as a member of it, provided that he has been excommunicated after having been duly heard by the caste in defence. But even where he has been excommunicated without having been heard in defence, the Court's jurisdiction to interfere is limited to cases involving the loss of civil rights, that is, the Court will interfere only if the result of the sentence of excommunication, unfairly passed by the caste, has deprived the person excommunicated of his right as a member of the caste, to property or office or to some other legal right.

In the matter of expulsion from caste, the Courts treat caste corporations like any other societies or clubs. If there is jurisdiction and the procedure is fairly conducted and *bona fide* the action of the caste corporation or club is upheld. Appaya *vs.* Padappa, 23 Bom. 112. Where this is

not the case, the Courts will interfere to secure the rights of a member, who has been wrongly excluded from caste. Therefore where the inquiry as to the conduct of the alleged offending member has been *ex parte* and without notice to him and so contrary to natural justice, or where the decision is contrary to the rules of the caste or has not been come to *bona fide*, the Court will interfere by injunction. The Calcutta High Court have in Jagannath *vs.* Akali Dossia, 21 Cal. 463, held that the jurisdiction to interfere in cases of this kind is of a more extended character; that the rules laid down in English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where anyone who joins may well be taken to be bound not only by its general rules but also by any special orders made by its members, with regard to him, in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which the people belong not of choice but of necessity, being born in their respective castes or sects, and the consequence of exclusion from which are far more serious and affects a person's *status* in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of justice, even though presided over by judges of a different religious persuasion, against expulsion is much more needed than in clubs or voluntary associations. Cases of expulsion from them are therefore cognizable by the civil Court, and recently the Bombay High Court have held that if possible for reasons

stated, the civil Courts have to be more careful in the matter of caste expulsions, than is necessary in the case of voluntary associations. The Civil Court has jurisdiction to inquire into the validity of the order of excommunication by a certain Swami for the mis-conduct of a person against whom such an order has been passed. Appaya *vs.* Padappa, 23 Bom. 122 (125). However in Nathu *vs.* Keshavji, 26 Bom. 178, Chandavarkar J. said at p. 186, "it is true, in a sense, that a member of a caste belongs to it by birth, whereas a member of a club enters it voluntarily. But that cannot make any difference as to the legal aspects of either. It is just as competent for a man to leave his caste, as it is competent for a member of a club to resign its membership. Though a man belongs to his caste by birth, it can hardly be said on that account that he belongs to it by necessity, for it is the man who himself determines the necessity. Though born in it by necessity he continues by volition in it, He can go out of it whenever he likes. The caste cannot compel him to be in it. The caste is as much a voluntary association as a club, the one can frame rules for its guidance and revoke them and make fresh rules as well as the other. It is equally within the power of the caste to admit into its fold men not born in it as it is within the power of a club to admit any one it likes as its member. To hold that the membership of a caste is determined by birth, is to hold that the caste cannot, if it likes mix with another caste and form both into one caste. That would be striking at the very root of the caste autonomy".

But in a matter relating to caste customs over which the ecclesiastical Chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of the caste, the civil Courts cannot interfere. Because the head of the caste has jurisdiction to deal with all matters relating to the autonomy of the caste according to recognized caste customs. Ganapati Bhatta *vs.* Bharati swami, 17 Mad. 222. But if the result of an excommunication is to deprive a man of his legal rights, a civil Court has jurisdiction to entertain a suit brought to set aside such excommunication, as illegal and to enquire into the merits of the case. But even here the jurisdiction is limited. All the Courts can enquire into is whether the order of excommunication was passed *bona fide* in accordance with natural justice, that is, after the due hearing given to the party excommunicated, at a regularly convened meeting of the Caste which passed the order, or by a person duly authorized by the caste to pass it, in accordance with other caste usage or rule, and for an offence against that usage or rule which the man excommunicated did as a matter of fact commit. If these conditions are fulfilled the Court must hold that the caste acted within its powers as a domestic tribunal with whose discretion it will not interfere, the Court in that case having jurisdiction to inquire from the point of view of the caste, not of the Court, into the reasonableness or justifiable character of the rule for the breach of which the order of excommunication was passed. Advocate General of Bombay *vs*, David Haim Devaker, 11 Bom. 185.

Caste meeting is not a regular ecclesiastical Court, and the procedure in a caste tribunal is not the same as is followed in courts of law. The parties interested are supposed to be witnesses themselves of their own knowledge. They have not to pass judgment upon facts on others, but to regulate their own conduct. A different set of principles must apply to caste meetings than those which apply to Courts. But the caste must proceed according to caste usage, and must exercise its powers with due care and in strict conformity with customs ; and must give an apportunity to the person complained of for explanation. Vallabha *vs.* Madusudanan, 12 Mad. 495. It must act also *bona fide*, and not be influenced by malice Keshavlal *vs.* Bai Girja, 24 Bom. 13. Where the above conditions are complied with, the civil Courts have no jurisdiction to review the action of the caste, or to examine the question on the merits. Appaya *vs.* Padappa, 23 Bom. 122; see also, Vora Thaverbhai Bhaichand *vs.* Shah Ujamshi Tribhovan, 13 K. L. R. 265.

Hence it is apparent that a civil Court has no right to inquire into the validity or otherwise of a caste resolution as long as it does not affect civil rights. Thus if a Caste resolution is passed depriving a member of *manpan*, a Court has no jurisdiction to inquire whether the resolution was passed on justifiable grounds, and after fair and proper inquiry, because such a resolution does not affect any legal rights ; deprivation of *manpan* invitation not being tantamount to excommunication, Raghunath *vs.* Janar-

dhan, 15 Bom. 599. But if civil rights are affected, the civil Courts have jurisdiction to inquire into the validity of the resolution, whether it be the resolution of a caste; or the resolution of any other community; or the resolution of a private association; or the resolution of a club; or the decision of an ecclesiastical chief of a caste. (see Krishna sami *vs.* Virasami, 10 Mad. 133; Advocate General of Bombay *vs.* David Haim Devakar, 11 Bom. 195; Jagannath *vs.* Akali, 21 Cal. 463; Gompertz *vs.* Goldingham, 9 Mad. 319; Ganapati *vs.* Bharati, 17 Mad. 222).

CHAPTER III.

SUITS RELATING TO CASTE QUESTIONS NOT COGNIZABLE BY CIVIL COURTS.

So far is the principle of the recognition of the autonomy of the caste, and of non-interference with caste questions carried in the Bombay Presidency, that even suits relating to caste offices are not allowed to lie there when they involve any caste questions. (Ambu *vs.* Khanu, 6 Bom. H. C. R. A. C. J. 19 (note); Morar Daya *vs.* Nagria, 6 Bom. H. C. R. A. C. J. 17; Shankara *vs.* Hanma, 2 Bom, 470; Murari *vs.* Suba, 6 Bom. 725; Gursangaya *vs.* Tamana, 16 Bom. 281).

In the Madras Presidency, a suit for damages for the refusal by a priest to allow a person to make his offerings to the idol and to enter the *sanctum sanctorum* was held to lie

in civil Courts; Vengamuthu *vs.* Pandaneswara, 6 Mad. 161; Venkatachalapati *vs.* Subbarayadu, 13 Mad. 293; even though among Mahomedans, a suit for injunction to restrain certain persons from reading the *kutbah* in their own mosque was held not to lie. Maine Moilar *vs.* Islam, 15 Mad. 355. But there also the same view is taken of the autonomy of the caste as in Bombay; and it is held that the civil Courts cannot interfere in matter relating to caste customs, over which the ecclesiastical chief has jurisdiction, and exercises the same with due care and inconformity to natural principles of Justice and the usage of the caste. Ganapati *vs.* Bharati, 17 Mad. 222.

Suits brought to regulate the ritual of pagoda service are deemed not to be of civil nature, and suits for mere observances of religious honours have been repeatedly held by the Sadar Court, as well as by the High Court of Bombay not to be cognizable by civil Courts. (Sri Sunkar *vs.* Sidh Lingaya Charanti, 2 Bom. 473 (n); Sangapa *vs.* Gungapa, 2 Bom. 476; Vasudev *vs.* Wamanji, 5 Bom. 80; Rama *vs.* Shivram, 6 Bom. 116.) Because it is for those who profess any form of religion to adopt such ritual as they think fit, and to make and enforce such rules as may be necessary to secure its due observance.

The rule against the maintenance of suits relating to caste rights is based sometimes on the impracticability of enforcing Courts' decrees. Sudharam *vs.* Sudharam, 3 Beng. L. R. A. C. J. 91; Kanji Bavla *vs.* Arjun Shamji, 18 Bom. 115.

1. SUITS RELATING TO RELIGIOUS RITES OR CEREMONIES:—

Suits as to religious rites or ceremonies, which involve no question as to right to property or to an office, are not suits of civil nature, nor are they intended to be brought within the jurisdiction of Civil Courts.

ILLUSTRATIONS.

(1). In Vasudev *vs.* Wamanji, 5 Bom. 80, a suit was brought by the plaintiffs as members of a committee of managers of a Hindu temple, to compel the defendants, who are hereditary *pujaries* or priests of the temple, to take out certain ornaments from the treasnry of the managing committee and to place the same upon the image of the god, on such high days and holidays as may from time to time be appointed by the managing committee, and further, to obtain a declaration that the said ornaments, after they have been so taken out of the treasury are in the custody of defendants, and that the defendants are responsible for the safe keeping. The suit was held unsustainable, because the regulation of religious ritual is not within the province of Civil Courts. In England, there are Courts which have power to Compel the due performance of religious worship; but they are Courts specially constituted for the purpose; and this circumstance in itself indicates that there are no such jurisdiction inherent in the ordinary Civil Courts; even the Courts so specially constituted can only deal with the ceremonial of the established church, which is the form of worship of the state; and they have no power to interfere for the purpose of regulating the rites and usages peculiar to any dissenting sect or body. In India there is no State Church; and no Court empowered to deal with

questions purely ecclesiastical, whether arising in the Christian, Hindu or any other community. It is the policy of the state to protect all religions but to interfere with none. It is for those who profess any religion to adopt such ritual as they think fit, and to make and to enforce such rules as may be necessary to secure ite due observance. With such matters the Civil Courts have nothing to do unless and until they result in the infraction of some civil right.

(2) It is not the province of the Civil Courts to determine what is or is not contrary to Mahomedan religion, or to decide what religious services different sects of community may hold in their own places of worship, provided the holding of such ser ices cause no disturbance or illegal annoyance to the rest of the community, or does not infringe on the rights of their co-worshippers. Therefore where the plaintiffs (Mahomedans) wish to prevent the defendants, who are also Mahomedans, from performing service called "*Kutbah*" in their own private *mosque* on Friday, the suit is held to be one which the Civil Courts cannot take cognizance of. Maine Moilar vs. Islam Amanath, 15 Mad. 355.

(3) A worshipper of certain idols cannot maintain a suit against the custodian of those idols to locate them in a certain temple, instead of in another temple, as long as his right to worship the idols is not denied, because suits as to religious rites and ceremonies, which involve no question of the rights to property or to an office, are not regarded by the legislature as suits of Civil nature and are therefore, not cognizable by the Civil Courts. Lokenath Misra vs. Dasarathi Tewari, 32 Cal. 1072; 10 C. W. N. 505; 2 C. L. J. 590.

(4) *Suit for declaration of a right to recite certain texts* :—

Plaintiffs sued on behalf of the *Vadagalai* community for a declaration that they were entitled to recite certain sacred texts and to receive certain honours and *prasadam* etc, on that account and for damages. Held that the subject of the plaintiff's claim was confined to rights to religious ceremonies, without a claim to any office or emoluments. Their claim to damages on account of perquisites which they had been prevented from getting was apparently put in to clothe the Court with jurisdiction. The plaintiff's claim was on behalf of all the members of the *Vadagalai* community wherever residing, numbering many untold thousands, and it was obvious that the whole of the ill-defined community could not be entitled to any particular office in a temple or to any emoluments or perquisites thereof. Hence, there was no claim by the plaintiff for an office and their claim for damages was purely imaginary. Consequently the civil Court had no jurisdiction to entertain the suit as it related to a matter of *ritual or ceremony in a religious matter*. Subbaraya Mudaliar vs. Vedantachariar, 28 Mad. 23.

(5) Right to perform *Ram Lila* not connected with shrine or temple :—The plaintiff, a minor, sued for a declaration that he had a right to hold a certain *Ram Lila* and claimed an injunction to restrain the defendant from interfering with that right. It was admitted that the *Lila* used to be held by means of voluntary subscriptions of the Hindu community. The expenses of the *Ram Lila* used to be paid out of these subscriptions, and the balance was appropriated by the plaintiff. Held that the suit was not maintainable under section 9 of the Code of Civil Procedure, the pageants not being connected with any temple, shrine or sacred spot, and the plaintiff not holding any office or receiving

any emoluments. Chunnu Dat Vyas vs. Babu Nandan, 7 A. L. J. 529 ;6 Ind. cas. 223.

II. SUITS RELATING TO MERE DIGNITIES AND HONOURS.

As suits brought to regulate the ritual of a pagoda service are deeme i not to be of a civil nature, so suits for mere observance of religious honours have boen repeatedly held by the Sadar Court as well as by the High Court at Bombay, not to be cognizable by the Civil Courts, on the principle that it is for those who profess any form of religion to adopt such ritual as they think fit, and to make and enforce such rules as may be necessary to secure its due observance. This is borne out impliedly from the language of the explanation to section 9 of the Code of Civil Procedure, which provides exceptionally only for suits to which the right to property or to an office is contested. And the explanation does not extend the meaning of the expression 'suits of civil nature'; but merely enacts the law as it has always been administered by the Courts. And the Courts should discourage as much as possible the claims to mere dignities and honours, because Civil Courts ought not to be involved in the determination of trivial questions of dignity and privilege, which are much better left to the decision of the society in which they arise. Rama *vs*, Shivram, 6 Bom. 116.

ILLUTRATIONS.

(1) Claim by a swami to be carried in a palanquin on the high road :—In Sri Sunkar Bharti Swami *vs*. Sidh

Langayah Charanti, 3 M. I. A. 198, the claim was by a swami or chief priest of Smartava caste of Brahmins to the exclusive right of being carried cross-wise on the high road in a palanquin on ceremonial occasion in virtue of a grant from the ruling power to a predecessor in office. Lord campbell said, "In England although an action may be maintained for the disturbance of an office or franchise, an action could not be maintained by the grantee of the dignity from the crown against a person who without a grant assumes a like dignity; but it does not necessarily follow that such is the law in Bombay." Their Lordships of the Privy Council remanded the suit to the Sadar Adawlat of Bombay to consider whether, supposing the allegations of the Swami to be true, his action would by law of the Bombay Presidency be maintainable. The Sadar Diwani Adawlat held that the swami was not entitled to maintain the suit. Bell J., said: "The reigning Government is the authority to whom the appellant should have applied to support in his rights, and which alone can permit or withhold the use of honours of this or every other kind; but our Courts should discourage as much as possible claims of so *unsubstantial and objectionable a nature* as the one now brought under our consideration." And Brown J., said:—"The right to ride in a palanquin cross-wise conveys with it so much absurdity that if judgment be required on such matters, a Civil Court might be hereafter equally called on to pass a decree on any alleged privilege claimed by a devotee to stand on one leg, or proceed by prostrations from one temple to another." This case is reportedin 2 Bom. 475-6.

(2) Claim to the office of Chalvadi :—

The plaintiff was the hereditary holder of the office of *Chalvadi*, or bearer on public occasions, of the insignia or symbols of the Lingayet caste of Bagalkot, in the district of Belgaum. No fees as of right were appurtenant to the office, but voluntary gratuities might be given to the *Chalvadi*. The plaintiff sued for a declaration that he was the *Chalvadi* of the caste, and for damages against the defendant as an intruder upon his office for the loss of his income. Held that the claim to the *Chalvadi* of the Lingayet caste was a caste question within the meaning of s. 21 of Regulation II of 1827. The alleged duty of *Chalvadi* being to carry the insignia of caste at public ceremonials, without any right to levy fees or receive salary for the proper performance of that duty, is essentially a matter which concerns the caste exclusively. Shankara *vs.* Hanma, 2 Bom. 470.

(3) Claim to take a Cupola to a Lingayet temple :—

The plaintiff a Lingayet by a caste sued for a declaration of his right (which he alleged to be hereditary) to take *Cupola* to a Lingayet temple and to place it upon the car of the idol, and to take a *Nandicola* (Bamboo) with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honour of the Lingayet saint. Held, that the suit was not maintainable, as it was brought to vindicate the plaintiff's right, not to an office, but to a mere dignity uncon-

nected with any fees, profits or emoluments. Sangapa *vs.* Gangapa, 2 Bom. 476.

(4) Claim to perform the honorary duties of a caste office :—A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy the privileges and honours at the hands of the members of the caste in virtue of that office is a caste question, and not cognizable by a Civil Court. The same view applies where there are fees appurtenant to the office.

The plaintiff belonged to the *Mahar* caste, and sued to recover from the defendants certain fees which, he alleged were appurtenant to the office of *Guru* to the members of the *Mahar* caste, living in a certain village, the defendants denied that the plaintiff was their Guru. The suit was dismissed on the ground that it involved a caste question. Murari *vs.* Suba, 6 Bom. 725.

(5) Suit to be declared Ayya of Hiremath and to restrain defendant from so styling himself :—A plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath at Kamalpur by reason of his title to be called the Ayya of that Hiremath, and to obtain a perpetual injunction to restrain the defendant from using the name of "Ayya of Hiremath." The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right, and that, that assumption would enable, as it had enabled, the defendant to attract to him-

self a large number of plaintiff's followers, and thereby appropriate to himself the fees, which would otherwise have been paid to the plaintiff. Held that, as it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honours at the hands of the members of the caste in virtue of that office, it was a caste question not cognizable by civil Court. The case thus resembles Murari *vs.* Suba, 6 Bom. 725. The fact that there had been no allegation of specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant, showed that, what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the Court were to interfere in such cases, it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another.

The law does not recognize the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger. The mere assumption of a name which is the patronymic of a family by a stranger who has never before been called by that name, whatever cause of annoyance it may be to a family, is a grievance for which law affords no redress. (Du Boulay *vs.* Du Boulay L. R. 2 P. C. 430. followed.)

Gadigeya Adiveya Hiremath Basaya *vs.* Mallaya Rapati, 34 Bom. 455 ; 12 Bom. L. R. 358.

(6) *Procession of an idol* :—

A claim by one of several worshippers that the procession of an idol should go through a particular street was held to be a right not cognizable by the Civil Court. Nagiah *vs.* Muthacharry, 11 M. L. J. 215.

(7) *Claim to parade bullocks on* pola :—

The plaintiffs sued for a declaration that they had the right of parading bullocks on the *pola* (the last day of the month of Shravan) of one year, and the defendant on the *Pola* of the next year, and for damages for the invasion of the plaintiff's right by the defendants, and for an injunction restraining the defendants from interfering with the said right, held, that the suit was not maintainable, for civil Courts must not be involved in the determination of *trivial questions of dignity and privilege*, which are much better left to the decision of society in which they arise. Rama *vs.* Shivram, 6 Bom. 116.

(8) *Claim for precedence in worship* :—

The plaintiff claimed to be entitled to certain *mans*, consisting of the right to be the first to worship the deity on certain occasions and to receive gifts of rice, cocoanut, and vida and venison made by the priest on certain religious ceremonies and other occasions, and he alleged that the defendant had obstructed him in the enjoyment of the *mans*, and sought to obtain a perpetual injunction against

the defendants. Held that the suit would not lie on the ground that the trifling gifts made by the priest of rice, a cocoanut and vida on the occasion of worshipping the deity and of the price of venison on the other occasions cannot be regarded as *emoluments*. They will appear to be mere symbols of recognition and marks of respect of, and to the holders of *mans*, and the Civil Courts aught not to be involved in the determination of trivial questions of dignity and privilege. Narayan *vs.* Krishnaji, 10 Bom. 233. This principle has been recognized and held authoritative as a general law, in Re Atmaram Narayan Parab, 14 Bom. 25.

(9). *Claim for precedence at religious festival* :—The plaintiff alleged that he and his ancestors had possessed for 300 years the privilege of receiving before others sacred ashes, betel and nut, flowers, &c. at certain pagodas on festival and other days, and that the defendants had disputed his claim to precedence and created a disturbance, whereby the plaintiff was prevented from enjoying the privilege. The plaintiff prayed that his claim to receive first honours might be established, and that the defendants should be personally restrained from preventing him from receiving the same. Held that the suit was not for an office or for a money value, but for an honour, and was not therefore cognizable by a Civil Court. Kuruppa *vs.* Kalanthayan, 7 Mad. 91.

(10) *Claims to customary funeral presents from a member of a Caste* :—The plaintiff and defendant were

members of the same caste. The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant's father, in which, as a member of the caste, the plaintiff was entitled to a share, he had been omitted, and had received nothing. He sued the defendants to recover damages for the injury to his character and reputation by such omission. Held, that the plaintiff had no legal right to the funeral presents, and the slight, which the omission to give such presents to the plaintiff might imply, could only be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal. Mayashanker *vs.* Harishanker, 10 Bom. 661.

(11) *Suit by a Hindu priest for damages for withholding religious observances due to his rank* :—

In Sriman Sadagopa *vs.* Krishna Tatachariyara, 1 Mad. H. C. R. 301, it was held that a Hindu priest cannot sue in respect of the withholding of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non performance of such observances, may have caused him some unascertainable pecuniary loss. The plaintiff, the Gurukal (spiritual leader) of Cri Abohalam Matham sued the defendants, the wardens of a pagoda at Conjeeveram for injury done to him by withholding from him certain *honours* and *emoluments*, and also sought to have his rights to such honours and emoluments established for the future. The plaint alleged that from time immemorial the predecessors of the plaintiff and the plaint-

iff himself during his tenure of office, were entitled to and received those honours and *emoluments* from the *Dharmakartas* of the said pagoda, and from the worshippers at that pagoda was in the hands of Government, such honours and emoluments were awarded under the authority and order of the Collector for the time being. In May 1860 plaintiff informed the defendants of his intention to proceed to the annual festival of the pagoda, and called upon them to receive him with the honours and emoluments due to his rank. The defendants promised to do so, but by various false excuses delayed to comply with his demand and after the plaintiff had waited at their request from June to October, finally failed to receive him in the manner to which he was entitled and in which they had promised to receive him. Held that the suit was not maintainable.

Scotland C. J. observed :—" This case is not in its circumstances the same as special appeal No. 94 of 1861. There the suit was simply for the regulation of the *ritual of the pagoda* so connected with certain observances of religious worship, and no claim was made or question raised as to the value of the offerings or in respect of any pecuniary damages sustained. But here the plaintiff's claim includes under the head of "emoluments" a number of items to each of which money value is attached, and one or two of which appear not to be of a perishable nature ; and besides large sums have been claimed for *loss or dignity* and the expenses incurred in the ceremonials connected with the plaintiff's visit. But I have come to the conclusion that we can make no such distinction, and that the

matters of claim are not of such a civil nature as entitle the plaintiff to maintain a civil suit. We must first consider what is the nature of the subject matters in respect of which the plaintiff seeks to recover as damages the money items particularized in the plaint. By merely affixing a money value, the plaintiff of course cannot give himself a right to sue which he does not otherwise posses. Now though the word "emoluments" as well as the word "honours" is used in the plaint, and doubtless ordinarily means temporal gains, profits, advantages, in respect of which a right to bring a civil suit clearly exists, yet we must look in this case to the items of claim in the schedule to which alone the word applies, and those clearly show that every one of the matters in respect of which the suit is brought is purely a matter of religious and sacred observance, in connection with the worship and ceremonials at the pagoda, and is claimed by the plaintiff as a matter of devotional respect and display due to his priestly rank, or as a votive offering made to him whilst passing in procession through the temples, and when brought to the presence of the principal idol. Further more, it appears and is admitted that the office of "Gurukal" relates to the Hindu religion generally, and that all the offerings and devotional honours are claimed at the pagoda in common with those at other pagodas which the plaintiff might choose upon occasion to visit. He is not officially connected in any way with the management or control of the pagoda, or its property or funds; and alleged dues of his office have no doubt been owing to the great reverance at one time entertained for his sacredotal rank in the Hindu religion and the importance from a religious point of view of his mere presence at the pagoda. But this would seem now to become quite otherwise; substantially all the *honours and emoluments in respect of which damages are sought are in themselves matters*

purely of religious ceremonial and devotional observance, and are connected with a priestly office, which as regards the Dharma kartas and worshippers at the pagoda in question, has attached to it no other claim or right than that which rests upon the religious feelings, which they, in common with other Hindu worshippers, entertain for the sacred position of the plaintiff. Such honours and emoluments cannot in any respect be considered remuneration for duties or ministrations performed by the plaintiff in the secular affairs or religious services of the pagoda. Nor can it be said that the defendants as trustees of the pagoda funds are compellable in law to expend those funds in defraying the costs of those honours and emoluments. There is no doubt that the Civil Courts will recognize and enforce the rights of persons holding offices connected with the management and regulation of the pagodas and if the holder of such an office were intitled to remuneration for his services in the way of salary or otherwise he has a Civil right entitling him to maintain a suit, if that remuneration were improperly withheld. So, too, suits are commonly entertained for the purposes of trying and deciding who are fit and proper persons of right entitled to be appointed *Dharmakartas* of a pagoda. In such cases it will be found that the offices are of a secular character and are so dealt with, though religious duties are attached to them, the occupants being employed to exercise business functions, either as trustees and managers of property and funds of the pagoda, or as overseers in the regulation of its affairs generally, and having necessarily civil rights and liabilities which may properly be made the subject of a civil suit. But nothing of this kind can be said of the plaintiff in his purely religious office of Guru. The duty of individuals to submit and to perform certain religious observances in accordance with the ritual or ceremonial practice

of their race or sect is, in the absence of express legal recognition and provision, an imperfect obligation of a moral and not a civil nature. Of such obligations the present civil Courts cannot take cognizance. And it is of great importance in this country that the Courts exercising their civil jurisdiction, should carefully guard against entertaining suits in respect of mere ritual observances and the conduct of the various kinds of religious worship and ceremonies, and of what, as incident there to, may be due to the sacred character or the religious rank and position of individuals. With such matters the Civil Courts cannot properly deal, and if their jurisdiction be extended to interfere in them, the law should be made instrumental in upholding and continuing the ceremonials and superstitious observances of idol worship, for the benefit merely of the few who profit by them The subject matter of the present suit is purely religious, and relates to the sacred office of the plaintiff, and has no connection with any rights that can properly be considered as being of a civil nature and the civil judge was right in rejecting the plaint."

(12) *Disputes as to precedence or privilege between purely religious functionaries* :—The plaintiff, Shankaracharya of the Sharada math at Dwarka in Gujrath, sued the defendant Shankaracharya of the Jyotir math at Dholka in the same province for (1) declaration that the defendant was not entitled to the style, title and dignities of a Shankaracharya and that he was not entitled to call for or receive any offerings from the people of Gujrath in his assumed capacity of a Shankaracharya of the Jyotir math or a branch of the math, (2) for an account of the money received by the defendant as a Shankaracharya in

Gujrath with a decree for payment to the plaintiff of the sum found to have been so received by the defendant, and for an injunction restraining the defendant from styling himself a Shankaracharya in Gujrath and from claiming and receiving offerings in Gujrath as Shankaracharya of Jyotir-math or a branch of that *math*. Held, dismissing the suit, that to decide disputes as to precedence or privilege between purely religious functionaries is not part of the business of the Civil Courts, nor will they grant injunctions to prevent preachers from preaching where they like under any title they please provided no office or property is disturbed or interfered with. For interference with mere dignity no suit can be maintained. For voluntary offerings received no suit will lie. (Boyter *vs.* Dodsworth, (1796), 6 T. R. 681 followed). Madhusudan Parwat *vs.* Shri Shankara Charya Swami of Sharda math, 33 Bom. 278.

(13) *Suit for an office and for a right to settle caste disputes* :—An hereditary exclusive right to settle caste disputes is not cognizable by the civil Courts. Because the right depends upon the voluntary submission of the members of the caste and would not be a subject for judicial declaration. The civil Courts cannot enforce the same though a right to collect money is incidental to the right claimed. Subbaraya *vs.* Venkatanarasu, 2 M. L. J. 83.

(14), *Suit by a hereditary* purohit *for declaration of his right to officiate and for damages for loss of fees* :— The ancestor of the plaintiff was appointed *purohit* of the

town of P. by Government and obtained prior to 1810 a *mirasi inam* as the emoluments of the office. The plaintiff sued for a declaration of his right to officiate as the *purohit* of the defendants and for damages for loss of fees caused by defendants employing another *purohit*. Held that the plaintiff had no cause of action. Such claims have been recognized in Bombay but the court did not follow the Bombay ruling in (Dinanath *vs.* Sadashiv Hari Madhave, 3 Bom. 9); Ramkrishna *vs.* Ranga, 7 Mad. 424.

(15) *Suit for a declaration of a right to receive marks of recognition and honour* :—The plaintiffs brought their suit for a declaration of their right to receive, at the hands of the *purohit* of the village idol, at certain festivals *malla* and *tilak*, and other marks of recognitiou and honour, and to obtain damages from the priests for withholding those marks of respect on three occasions. Held that, the suit is not cognizable by the Civil Court. The custom pleaded by the plaintiff was not proved and it wes entirely in the discretion of the *purohits* to give or to withhold these marks of respect. Gossain Doss Ghose *vs.* Gooroodass Chuckerbutty, 16 W. R. 198.

(16) *Suit to enforce payment of a sum of money as* Murjada :—Suit by the assignee of a shebait to enforce payment of a sum of money as *murjada* (respect-money) under colour of an alleged custom by which persons of the *Kassary* caste having marriage ceremonies or *shrads* per-

formed in their houses were bound to pay such *murjada* to members of the community, and the right to receive the same had become vested in a Sheeb Thakoor. Held that such a suit would not lie, Madhub Chander Mundul *vs.* Nobeen Chunder Dutt, 5 W. R. 225.

(17) A servant of a temple, who takes food offered to the idol, cannot sue the inamdar for damages, for not making the usual offerings. In Dhodphale *vs.* Garav, 6 Bom. 122, the plaintiff alleging that he was a member of a family of Guravs holding a certain Vatan attached to a temple, complained that the defendant was the holder of an inam allowance, granted in consideration of his daily offering to the idol some rice and cake and burning a lamp; and that he had omitted to make such offering for one year. He claimed Rs. 15 for damages. Held, that the plaintiff had no cause of action. The defendant's obligation, if any, was towards the idol, and, if that obligation was not performed, it could only be enforced by some person claiming to have a right to insist that the worship of the idol should be properly performed.

(18) *Declaration of exclusive right to act as* Khatib *and for injunction* :—A declaration of plaintiff's exclusive right to act as *Khatib* in a village and an injunction restraining others from acting as *Khatib* cannot be granted in the absence of any allegation or proof by the plaintiff of his being disturbed in the exercise of his office. Mira Mohidin *vs.* Asan Mohidin, 17 M. L. J. 421.

(19) *Removal of a priest from his office by a caste is a caste question*:—It was resolved by the members of a certain caste that the plaintiff, a priestess, should be dismissed from all the offices connected with the caste and the same should be performed by the defendant. The plaintiff, thereupon, filed a suit to obtain an injunction restraining the defendant from usurping the said office and from receiving the fees and income thereof. Held that, it was not competent to a civil Court to question the decision of the caste in the matter. The principle is whether the question turns upon the obligation of the members of the caste to accord to the holder of the office, certain privileges and honours, or to pay him fees in virtue of his office. In either case it is one which, if a caste is to be considered in any sense a self governing body, as is contemplated by the Regulation II of 1827, should be left to be decided and dealt with by the caste, according to its customary mode of procedure. Kala *vs.* Jagannath 1 Bom. L. R. 711.

(20) *Suit for partition among the joint trustees of a temple* :—Rights as joint trustees to the management and superintendence of worship at certain temples, none of the trustees having any pecuniary interest in the temple or their income, cannot be made the subject of partition by a civil Court, that is to say, a civil Court is not competent to grant a decree declaring that each of such trustees in rotation shall for certain definite period enjoy exclusively the right of management and superintendence. Sri Raman Lalji Maharaj *vs.* Sri Gopal Lalji Maharaj, 19 All. 428.

(21) *Suit for a Wasilat* :—A suit for *Wasilat* in respect of profits derived from a turn of worship, which are in their nature uncertain and voluntary, is not maintainable ; (Ramessur Mookurjee *vs.* Ishanchunder Mookerjee, 10 W. R. 457 followed). Kashi Chandra Chukerbutty *vs.* Koilash Chundra Bandopadhya 26 Cal. 356.

III. CLAIMS FOR COMPULSORY INVITATIONS TO DINNER.

Suits for enforcing claim for compulsory invitations to dinner will not lie, inasmuch as there is no law which empowers a man to compel another against his will to come and dine at his house, or to keep up *Samaj*, or to associate with another against his will, since such a decree would be, in effect, a direct interference with personal liberty.

ILLUSTRATIONS.

(1) Civil Courts cannot compel Hiudus against their will to ask other Hindus to their houses or their entertainments. Joychander Sirdar *vs.* Ramchurn, 6 W. R 325.

(2) In Koober *vs.* Parbhoodas, (1856), Bom. S. D. A. reports 172, it was held that a suit will not lie for damages because the plaintiff is not invited to a dinner, whether it be a caste dinner or *Dalwewar*.

(3) *Right to* Manpan *invitation* :—In Raghunath *vs.* Janardhan, 15 Bom. 599, the question was as to the right to *manpan* invitation of which the plaintiff was deprived for breaking the caste rule prohibiting the practice of bringing *naikins* or dancing girls to sing on the day of

munj, or marriage ceremony, with the object of putting a stop to the extravagant expenses incurred on such occasions, and declaring that any member of the caste contravening the above rule was to be considered an offender of the caste. It was held that the question was a caste question, the right to *manpan* invitation being not a legal right, but merely a social privilege, which caste usages only entitled a caste man to receive, and the caste was the only tribunal to which a caste man deprived of that privilege could resort.

(4) *Right to a membership of Samaj* :—In a suit for a decree declaring plaintiff's rights to a membership of the *samaj* or society of which defendants and himself were members, held that, no right of action would lie in such a case ; no question of caste was involved, the case did not come under s. 8 of Regulation III of 1793 ; and on principles common to English and Hindu law, Courts of law had no jurisdiction in matters of a purely social nature. In this case the plaintiff invited the defendants to dinner party, which invitation, they accepted, but did not come. The defendants since then ceased to ask the plaintiff to their parties. "There is a clear distinction between interference for the protection of rights of property and of personal liberty, security and reputation, and interference in matters of a purely social nature. Even where rights of property are involved in the membership of society or association, yet, if the main object of the association be of a social character, the members of the association are the sole judges

whether a particular individual has so conducted himself as to entitle him to continue to be member of the body. This was so held in the case of Hopkinson *vs.* the Marquis of Exeter before the Master of the Rolls, reported in the 37th volume of the law journal reports. There a member of a club sued for his restoration to the membership of the club from which he had been, as he thought, unjustly excluded. The club in that case was partly of a political character, but its objects were mainly social, and the Court refused to interfere with the decision of the other members who had excluded the plaintiff, notwithstanding that rights of property were involved." But in the present case much less should the interference be made, where there are no such rights. Sudaram Patro *vs.* Soodharam, 11 W. R. 457.

(5) *Right to sue for Manpan in Berar* :—

A suit to enforce the following rights, which are usually described in Berar by the word *Manpan*, does not lie in a Civil Court.

(*a*) Right to have precedence in one's bullock at *Pola*;

(*b*) Right to give the first blow to a buffalow at *Daschera*;

(*c*) Right to gifts of cake and fuel at the holy festival and betel-nut at weddings;

(*d*) Right to *Pandharengadh*, which means a small present of money given by the bridal party to

the senior member of the Patel family at weddings.

Shiwaji *vs*, Mahadeo, 3. N. L. R. 131.

IV. AGREEMENTS RELATING TO SOCIAL AND RELIGIOUS MATTERS.

(1) An agreement between members of different *Samajes* to have social intercourse with each other and to inter-marry, is not opposed to public policy, but rather in accordance therewith. But the Court cannot take notice of such an agreement, because it has preference to social and religious customs, and cannot be enforced by law. No Court can compel the parties to eat together, or to join in social intercourse, or contract marriages with each other. The Court cannot decree specific performance of such an agreement, nor award damages for the breach thereof. Haronath Puttur *vs.* Nitto Paramanick, 22 W. R. 517.

(2) An agreement to remain for ever in a particular community cannot be enforced by a suit in Court nor a penalty for the breach thereof be allowed. Nitye Shaha *vs.* Shoobal Shaha, 10. W. R. 349.

(3) A suit will not lie for the assertion of a right to a mere honour or dignity. And it does not matter whether such right is substantiated by an agreement between the plaintiff and the defendant. The principle is that Civil Courts ought not to be involved in the determination of trivial questions of dignity and privilege although con-

nected with an office. Rama *vs.* Shivram, 6 Bom. 116; Narayan *vs.* Krishnaji, 10 Bom. 233.

(4) *Suit for the enforcement of caste arrangements*:—

The inhabitants of a street authorized the head of the caste to recover Rs. 7 for each marriage to feed the villagers when the bride and the bride-groom were from the street. The defendant became liable to pay Rs. 7 on the occasion of his daughters marriage, and having refused to pay the amount, he was sued to recover the same. Held, dismissing the plaintiff's suit, that the question was a caste question, the resolution to recover Rs. 7 for each marriage was the resolution of the caste. Abdul Kadir *vs.* Dharma, 20 Bom. 190.

V. SUITS RELATING TO CASTE QUESTIONS IN WHICH DECREE, IF PASSED, IS INCAPABLE OF EXECUTION ARE NOT SUITS OF CIVIL NATURE.

(1) The rule against the maintenance of suits relating to caste rights is based some times on the impracticability of enforcing them. Thus in Sudaram *vs.* Soodharam, 11 W. R. 457, Bayley J., observed that, "No decree could be executed declaring a person's right to the membership of society as the effect of such a decree would be to require that other persons do accept plaintiff's invitation and do partake of his food, although against their will, and that they must in their turn give him similar invitations and dine with him, whether they like to do so or not."

(2) *Suit to compel castemen to perform funeral ceremonies*:—In Kanji Bavla *vs.* Arjun Shamji, 18 Bom. 115, A Hindu of *Kharva* caste alleged that pursuant to a usage of his caste, he, on the occasion of his child's death, called upon the defendants -his caste fellows, to assist him in removing the dead body, and performing caste ceremonies incidental there to, but that they refused to comply with his request, in consequence of which he was injured in his caste status; and he prayed for a declaration that he was lawfully entitled to exercise and enjoy all his customary caste rights and privileges, and also for damages and for an injunction restraining the defendants from preventing other members of the caste from recognizing him and treating him as a member of the caste. Starling J., held that the suit was not maintainable, as there was no such slander as could give a right to sue for damages, and "as the decree to be of any effect would have to declare that all the members of the *Kharva* caste whom the plaintiff chose to call to his house on the occasion of a death in his family, must go, whether they were willing or not; and that the defendants were never to state any reason to any of their fellow members why they would not accept the plaintiff's invitation, and it is impossible to understand how such a decree could be enforced. If the defendants are in fault at all, it is because they have broken some social rule of the caste, and in such a case it is to the caste the plaintiff must go for redress."

(3) *Suit to compel barbers to pare plaintiff's nails*:—The plaintiffs sued certain individual barbers with the

prayer that the latter may be compelled to pare the nails of the former. Held, that the claim was not one of which the Courts could enforce execution and that it was governed by the decision of the late Sudder Court, of 22nd November 1854, p. 465, in which thirteen parties sued twenty six barbers to compel them to shave them, and it was held that the suit was not entertainable. Raj Kisto Majee *vs.* Nobaee-Seal, I W. R. 351.

(4) *Suits for compulsory invitation to caste dinners, or for damages for deprivation of manpan or society* :— A suit will not lie to compel Hindus, against their will, to ask other Hindus to their houses or their entertainments, or for damages because the plaintiff is not invited to a dinner; (Joychander *vs.* Ramchurn, 6 W. R. 325; Koober *vs.* Parbhoodas, (1856), Bom. S. D. A. reports 172). Similarly it has been held that no decree can be executed declaring a person's right to the membership of a society, as the effect of such a decree would be to require that other persons do accept the plaintiff's invitation and do partake of his food though against their will, and that they in their turn must give him similar invitations; Sudaram Putro *vs.* Soodharam, 11 W. R. 457. In the same manner it has also been held that the Court has no power to compel the member of any caste to ask the plaintiff or any one else to dinner, *munj*, or any other ceremonies, or to mulct the caste, or any member of it, in damages for not inviting him, or for passing a resolution not to do so. Raghunath *vs.* Janardhan, 15 Bom. 599.

(5) Persons accepting an invitation to an entertainment at their neighbour's house, and afterwards failing to attend, cannot be held liable to recoup the entertainer for the price of the food unconsumed on account of their absence; otherwise the risk of accepting invitations would be very serious. Kalai Halder *vs.* Shaikh Kyamuddi, 23 W. R. 417.

(6) It would be an interference in a caste question within the meaning of section 21 of Bombay Regulation II of 1827 clause I, if a Court were to make a decree ordering the members of a caste to re-admit a member to a participation in caste communications and privileges. The Legislature intended to prohibit the making of such decrees, if for no other reason, because they would be incapable of enforcement. It would be absurd to place a Civil Court in the predicament of being called on to imprison every member of a caste, who might at any time omit to ask the plaintiff to dinner, or might refuse to give water or fire. Narotam Bhagvan *vs.* Mithalal Kahandas, Bom. H. C. P. J. (1878) 235; Ganatra P. J. II, 64.

VI. SUITS IN WHICH THE PRINCIPAL QUESTION IS A CASTE QUESTION AND THE SUBSIDIARY QUESTION IS OF A CIVIL NATURE.

Where the principal question is a caste question, the circumstance that the plaintiff also claims fees attaching to the caste office claimed by him will not make the suit one of a civil nature.

(1) *Right to receive fees as* Mehtars *of the caste*:—

The plaintiffs sued to recover from the defendant certain fees alleged to be due to them as *Mehtars* of the caste, on the marriage of the daughter of the defendant. The defendant denied that the plaintiffs were his *Mehtars*. Held that the question between the parties was a caste question with which the Courts were precluded from interfering by Bombay Regulation II of 1827. s. 21. The principal question in the suit was, whether the plaintiffs were *Mehtars*, and this being a caste question the suit was dismissed. Murar Daya *vs.* Nagria Ganeshia, 6 Bom. H. C. R. A. C. J. 17.

(2) *Right to be recognized as head of the caste and to receive precedence and privileges in Bombay*:—

A man of the weaver caste sued to obtain a declaration of his right to be recognized as its head, and to receive from certain other members of it, on certain public occasions, the privileges and precedence accorded to the holder of that office, notwithstanding their election of another person to the office; held that in declaring the right claimed, the Court would be called upon to interfere with the autonomy of the caste; and by s. 21 of Regulation II of 1827, the Court is expressly prohibited from interfering in such matters. The principal question in the suit was, therefore, whether the plaintiff was the head man of the caste, and the privileges claimed were merely subsidiary to the principal question, which was a caste-question. Ambu Valad Appaji *vs.* Khanu Sakharam, 6 Bom. H. C. R. A. C. J. 19 (notes).

(3) *Right of a guru to recover certain fees appurtenant to his office in Bombay* :—The plaintiff who belonged to the *Mahar* caste alleged that he was the *guru* of the caste, and sued as such to recover from the defendants certain fees which, he alleged were appurtenant to the office of *guru*. The defendants denied that the plaintiff was their *guru*. Held, that the question was a caste question. In this case the principal question was whether the plaintiff was the *Guru* of the caste, and for the Court to decide that question, when the defendant had contended that the plaintiff was not their *guru*, would be to interfere with the autonomy of the caste. The question whether the plaintiff was entitled to claim the fees was only a subsidiary question, and did not render the suit one of a civil nature. Of course if the office be one which enables the holder to render the services to individual members of the caste, and the holder is actually employed to those services, he may be entitled to recover in the Civil Courts remuneration for them ; and in determining the amount of fees, the fees customary paid in the caste, would in the absence of special agreement, be properly taken as the basis for assessing it. In such a case, however, the suit is to recover remuneration for service done, and is clearly therefore of a civil nature. Murari *vs.* Suba, 6 Bom. 725.

VII. SUITS FOR CASTE OFFICES TO WHICH NO FEES AS OF RIGHT ARE ATTACHED.

(1) *Claim to the office of* Chalvadi :—Claim to the office of *Chalvadi* to which no fees as of right were appur-

tenant but voluntary gratuities might be given to the *Chalvâdi* was held not cognizable by a Civil Court, the duty of the *Chalvadi* being to carry the insignia of caste at public ceremonials, without any right to levy fees or receive salary for the performance of that duty. Shankara *vs.* Hanma, 2 Bom. 470.

(2) *Claim to the office of priest of Samayacharam*:— The plaintiff as *Anagundi Raja Guru* claimed to be entitled, and sued for a declaration of his title to the hereditary office of priest of Samayacharam, held that the suit for a declaration, that the plaintiff was entitled to the Samayacharam office, will not lie, when the office in question is not attached to any particular temple or place, and carries with it no specific pecuniary benefit, and the emoluments, if any, are voluntary contributions, while the duties of the office are to exercise spiritual and moral supervision over people who wear a certain caste mark in a certain tract of country. Tholappala Charlu *vs*, Venkata Charlu, 19 Mad. 62 ; 5 M. L. J. 209.

(3) In Jowahur Misser *vs.* Bhag Misser, (1857), 13 S. D. A. part I. 362, the plaintiff claimed a share in the gratuity or voluntary gifts made of certain property to a member of the plaintiff's family as the priest officiating at a *Sradh* ceremony, and the Saddar Diwani Adalat held that such a claim was not maintainable, because the fee paid was in the nature of voluntary gift to the person to whom it was directly made.

(4) *Suit to officiate as priest against the consent of the caste* :—Plaintiffs brought a suit for an injunction and damages on the ground that although they are the hereditary priests of the *Mochi* caste, the defendant employed another Brahman to perform certain ceremonies for him. The Subordinate Judge dismissed the claim, holding that the plaintiffs were not the hereditary priests of the *Mochi* caste, but only the delegates of the *Audich Punch* at Ahmedabad, and that the *Mochi* caste had passed a resolution to the effect that no work should be taken at the hands of plaintiffs. Held, that the Court had no jurisdiction. Assuming that the *Audich* Brahmans are the hereditary priests of the *Mochi* caste at Surat, and that they have the power of deputing priests to officiate at Surat, there is nothing which shows that the *mochi* caste is bound to accept, as their priest, any one so sent. The Civil Court could not inquire into the validity or otherwise of the decision of the caste in the matter. The parties were bound by it, and the plaintiff could not complain of the action of the defendant, who had done no more than obey that decision. Held also, that no injunction could be granted on the principle laid down in Raja *vs.* Krishnabhat, 3 Bom. 232, that the Court will not sanction any injunction which would have the effect of forcing upon any section of the community the services of a priest whom they were unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. Dayaram *vs.* Jethabhat, 20 Bom. 784.

VIII. CLAIMS BETWEEN RIVAL FACTIONS OF THE SAME CASTE TO COMMON CASTE PROPERTY.

(1) A suit was brought by certain members of the *shravik* caste at Surat to obtain a decree declaring them to be the proper recipients of half the compensation granted by the Collector of Surat in regard to certain shops belonging to the caste which had been divided into two factions, the plaintiffs forming one and the defendants the other of such sections. Held, that the question of the plaintiff's right to half the temple property is simply a caste question; it is not a right of any individual, nor can it be looked on as affecting the separate individual right of the parties. It is a question solely affecting the well being of the caste, and as such the Court cannot interfere. Nemchand *vs.* Savaichand, S. A. no. 591 of 1865, reported in 5, Bom. 84 (notes).

(2) The *Ghanchi* caste of Broach owned a certain number of cooking vessels. In consequence of a dispute relating to the apportionment of certain marriage fees, the caste was divided into two factions. The vessels continued in the possession of the persons who had the charge of them before the succession took place. The persons in possession and others who sided with them, objected to their use by the seceders, who, therefore, sued them to recover half the vessels or their value. Held that a claim by the member of one division of a caste against the members of the other division of that caste, for recovery of half of certain vessels

belonging to the caste or their value is a caste question within the meaning of s. 21 of Regulation II of 1827 and cannot be made the subject matter of a suit cognizable by a Civil Court. Girdhar *vs.* Kalya 5 Bom. 83 ; see also, Chapter V.

IX. MATTERS RELATING TO CASTE CUSTOMS OVER WHICH THE SPIRITUAL LEADER OF THE CASTE HAS JURISDICTION.

(1) The defendant, who was the *guru* (ecclesiastical chief) of a caste, charged the plaintiff who was a member of the caste, with certain caste offences, namely, that he neglected to visit the *guru* and pay the *Kanike* or fee by virtue of the spiritual relation though he was duly apprised of the *guru's* arrival, and that he associated with persons already excommunicated by the *guru*,, and issued against the plaintiff a provisional order of excommunication providing that the same should be in force until the plaintiff attended before the *guru* and obtained an order disposing of the said matters. The plaintiff sued to have it declared that the order passed against him is unjust and invalid on the ground that it was issued without notice to him and that he suffered thereby both in his property and reputation. In defence the defendant admitted the order, but alleged that it was only provisional, and that it was fully competent to the *guru* as head and chief of his caste to issue such order. Held, that in a matter relating to caste customs over which the ecclesiastical chief has jurisdiction and exercises his jurisdiction with due care and in conformity with the usage of the caste, the Civil Court

cannot iuterfere. Whether the deciple should visit his *guru* and make his obeisance, whether the former should pay the latter a *kanike* or fee by virtue of the spiritual relation, and whether the deciple should abstain from intercourse with persons already excommunicated by his *guru* are matters relating to the autonomy of the caste with which, as the head of the caste, the defendant has jurisdiction according to the recognized caste custom. The provisional nature of the order shows that care was taken to see that the punishment by way of excommunication which, as ecclesiatical chief, the defendant was competent to inflict was not more extensive than was necessary to enforce obedience to caste duties. If there has been no inquiry, its absence is due to plaintiff's contumacious refusal to attend for such inquiry. Ganapati Bhata *vs*, Bharati Swami, 17 Mad. 222.

(2) A *guru* as head of the caste, has jurisdiction to deal with all matters relating to the autonomy of the caste according to recognized caste customs. The Queen *vs*. Sankara, 6 Mad. 381 ; Murari *vs*. Suba, 6 Bom. 725.

(3) *Power of a spiritual head to fine an inferior spiritual dignitary* :—The term *Dharmakarta* as ordinarily understood in the legal phraseology of religious institutions, practically means a *trustee*. The word is however, some times used in a limited sense where the designation only is given to a particular functionary by immemorial usage, and with the designation go certain

rights and duties of a kind usually associated with the office of *Dharmakarta* in its conventional acceptation; (Sri Sadagopa Ramanuja *vs.* Sri Mahant Rama Kisore, 22 Mad. 189-referred to). Civil Courts are competent to give a declaration that a certain person is entitled to perform the duties of an office, where a duty is cast upon a man in virtue of his connection with an institution, or an abstract personality (as distinguished from a spiritual individual) who might absolve him from performance of the same. The right, however, is granted in the interests of the institution or abstract personality and not of the individual claiming it, and where the right has ceased to be beneficial to the former, it should be refused. Where a *Dharmakarta* or a superior spiritual dignitary, claims the right to impose a fine on an inferior spiritual dignitary, the propriety of the fine may be called in question in a Civil Court, and the person fined, if successful, can obtain its refund. The right to fine a subordinate should be strictly made out and is by no means presumed to attach to the superior office, and in the case of a revered and highly placed spiritual dignitary, the due performance of his duty is sufficiently secured, not by the power to inflict petty fines, but by removal from office in the case of a persistent misconduct. Srimat Paramahamsa Parivrajak Charya Peria Koil *vs.* Prayaya Dassji Varu &c., 11 Ind. cas. 175.

CHAPTER IV.

SUITS OF CIVIL NATURE.

We now proceed to consider cases involving caste questions, which were taken cognizance of by Civil Courts.

Suits in which the principal question relates to a civil or legal right, viz., right to an office or property being suits of civil nature are cognizable by civil Courts, even though the right claimed may depend upon the decision of caste questions, or questions as to religious rites or ceremonies or even to religious tenets. Under s. 9 of the Code of Civil Procedure, Act V of 1908, civil Courts have jurisdiction to entertain suits relating to infringements of rights connected with an office, but in suits relating to religious offices, the civil Courts ought not to interfere with or decide anything in reference to the rituals or ceremonials except so far as might be necessary for the protection of the office holders in the exercise of their rights. Thathachariar *vs.* Arayar Srinivasa Aiyangar, 9 M. L. J. 355.

The most important of this class of cases is, when the plaintiff alleges that he is the holder of a religious office to which emoluments are attached. In such cases the plaintiff may institute a suit for damages against an intruder into office, who deprives him of the benefits of that office; or a suit against a member of the caste for fees payable to the plaintiff in respect of ceremonies which the plaintiff is entitled to perform, but

which the defendant has got performed by another. In such Cases the plaintiff will be entitled to damages if he establishes that the office exists, that he is the holder of the office, that there are emoluments attached to the office; and in a suit against the intruder, that the latter has without right acted in the office and received the emoluments, or where the suit is against the member of a caste, that he engaged another person to perform the ceremonies and paid the fees to him; Vithal Krishna Joshi *vs.* Anant Ramchandra, 11 Bom. H. C. R. 6. The explanation to s. 9 of Civil Procedure Code of 1908 assumes that a suit in which the right to an office is contested is a suit of a civil nature.

The office of village priest has been uniformly considered by the Bombay High Court as one to be regarded as of benefit to the Hindu community, and as thus giving to its legal holder a claim to protection and relief against any invasion of his privileges. In Mulji Pursuram *vs.* Nagur Ramji, Sel. Cas. Bom. 131, it was ruled that the priest of the katchya sect in a particular division of the city of Surat, could recover damages both from the priest who had wrongfully officiated at a marriage, and from the person who had employed him. This ruling was confirmed in the case of Mancharam Shunkaram *vs.* Umba Pragji, Sel. Cas. Bom. 181, which recognized the obligation of the *yajman* not only to pay his *kulgor*, the fee for the *Shrimat* ceremony, but to employ him in performing it. In a subsequent case of Pandurang Succaram

vs. Balumbhat, Sel. Cas. Bom. 126, the plaintiffs sued as village *Joshis* for fees due on a marriage of the numerous ceremonies proper to such an occasion; it appeared that eighteen had been performed. The defendants admitted that the plaintiffs were entitled to fees on eight of these for the remainder they contended that nothing was due as they had been performed not by the plaintiffs but by the defendant's family priest or *Upadhya*; but as the rites had been performed the Saddar Court awarded payment of the fees or of a sum in default, though as the amount of the fee in each instance was declared optional, it was left open to the defendants to escape the effect of the decree by a nominal compliance with it. In the case of Krishnabhat *vs.* Anant, 4 Morr. 114, the Sadar Court said :—"The rule of the Court has constantly been that certain ceremonies are optional; but that when those or other obligatory ceremonies have been performed, the person entitled of hereditary right to perform them is entitled to be paid his fees, whether he performed them or not."

It was often held that a *jujman* could not discard a *purohit*, if faultless, even if appointed by himself. Radha Kishun *vs.* Sham Serma, 11 Beng. S. D. A. Sel. report 292. *Purohit* could recover damages from the priest who wrongly officiated at a marriage, and from the person who employed him. The Sadar Adawlat of Bengal changed this view as early as 1857, when it held that the Court could not try the question of faultlessness, and leave it to the

jujman; and it is quite a settled law now at least in Upper India, that there is no office of *purohit* recognized in law; Beharee Lall *vs.* Baboo, 2 Agra. 80. A *jujman* may select and dismiss his *purohit*, and may employ any one he likes for the performance of any services he may desire to have performed, and pay any fees to any one he may choose to pay. Thus in Mugjoo *vs.* Ramdyal, 8 Beng. L. R. 50, Mookerjee J., observed that, "a suit will not lie against the *jujman* for fees paid by him to the officiating priest either on the ground of hereditary right of *priesthood* or of any contract entered into with the plaintiff by the priest who officiated. The right of a *purohit* to officiate at the ceremonies of a family because his ancestors had performed the ceremonies before, has been justly held to be a right not enforceable at law. No one can compel another to employ him as a *purohit* against his will, and a Court of Justice has no power to enforce the order against the conscience of the party."

The same view is taken in the Madras Presidency; Kuppa Gurukal *vs.* Dorasami Gurukal 6 Mad. 76. As a general rule, a mere personal right to receive presents and ceremonial offerings of sacerdotal respect, as apart from one's connection with the management or control of any pagoda or its property or funds, is not held to be a right to an office, and a suit for its enforcement does not lie in Civil Courts; Rajah Vurmah Valia *vs.* Ravi Vurmah Kunhikutty, 1 Mad. 235; Striman Sadagopa *vs.* Kristna Tata Chariyar, 1 Mad. H. C. R. 301. Thus in Tholap-

pala Charlu *vs.* Venkata Charlu, 19 Mad. 62, the question was whether the priestship of *samayacharam* was an office for which a suit will lie in a Civil Court; the office was not attached to any particular temple or place, and no specific pecuniary benefit was attached to the office, the only emoluments were voluntary contributions, while the duties of the office were to exercise spiritual and moral supervision over people who wore a certain caste mark in a certain tract of country. Held that such supervision over the members of the caste cannot be enforced by law. It is entirely within the option of each individual member of the caste whether he will submit to it or not.' In Ramakristna *vs.* Ranga, 7 Mad. 424, ancestor of the plaintiff was appointed *purohit* of a certain town by the Government and allowed a *mirasi inam* as the emoluments of the office, and the said ancestors's descendants by an agreement divided the families in the town between them the defendant's family falling to the lot of the plaintiff who sued them for a declaration of his right to officiate as their *purohit*, and for damages for loss of fees caused by the employment of other persons, against whom also the claim for damages was made. The suit was held, however, not to lie, as there was no decision in the Madras Presidency recognizing such claims. The rule is held to apply even to Mahomedans, among whom the office of a Kazi stands on the same footing; Zeenut-ool-lah *vs.* Nujeeb-ool-lah, 6 Beng. S. D. A. Sel. Cas. 36; Bhooleva *vs.* Unwurulee, (1859) N. W. S. D. A. 127. But where he is properly appointed,

and is thus entitled to take for his own use certain customary payments as the proper fees pertaining to his office, he may sue for those fees, as apart from voluntary offerings and gratuities, anyone who by wrongfuly intruding into his office, has deprived him of the same; Muhammad Yussûb *vs.* Syad Ahmed, I Bom. H. C. R. app. 18. And the same rule applies to secular offices, such as those of *choudry* and barber which are not recognized now by law; Poorunmal *vs.* Khedoo Sahoo, 7 Beng. S. D. A. Sel. Cas. 336; Bhinuk *vs.* Collector of Jounpore, 2 Agra. 271; Ram Deepul *vs.* Chukhoo, 1 N.-W. P. H. C. R. 291; Rajkisto Majee *vs.* Nobâee Seal, 1 W. R. 351.

The heritable character of the office of the family priest appeârs to be still recognized by the Bombay High Court, even though the fees payable by the *jujmans* should not be fixed, and be entirely within the discretion of the person paying; Sitaram Bhat *vs.* Sitaram Ganesh, 6 Bom. H. C. R. A. C. J. 250; Vithal Krishna *vs.* Anant, 11 Bom. H. C. R. 6; Dinanath Abaji *vs.* Sadashiv, 3 Bom. 9. Because the right of performing the religious ceremonies of certain classes of people as *purohit* is by custom considered analogus to real property; Krishnabhat *vs.* Kapabhat, 6 Bom. H. C. R. A. C. J. 137; Balvantrav *vs.* Pûrshotam, 9 Bom. H. C. R. 99. Uuder Hindu law *yajman vritti* is a *Nibandh* and is ranked amongst the hereditary rights of immoveable property. The office of hereditary priest (*yajman vriti*), where it is held in relation to a family, owes its origin continuance and binding

character to custom, not to grant from the King or an agreement between the parties. Where the office is one of the family priest, the mere fact that in any individual case it has been created originally by the caste for the purposes of families belonging to it cannot affect it, because the office carries with it a hereditary right in the nature of property, and the incumbent cannot be deprived of it by any one unless he has become a *patit* (out caste) or has declined to officiate. The caste in such a case makes the selection for the families; and when any family accepts the officiator as its hereditary family priest custom annexes to the office certain incidents in the nature of Civil rights as against the family, which neither the family, nor the caste has power to annul except on the ground of some offence under the Hindu law committed by the officiator, or of refusal by the officiator to discharge his duties as family priest. Where a caste has appointed a man to mere priestly office there is no right of property conferred, and his continuance or removal is exclusively within the competence of the caste and it is a caste question. But it is different where the office of the hereditary priest is created for the performance of religious ceremonies in certain families, provided according to Hindu Law, either the caste or the families, have power to create such office and give it the character of immovable property; Ghelabhai Gaurishanker *vs.* Hargovind Ramji, 13 Bom. L. R. 1171.

The rule is not restricted to religious offices only.

Thus in Yellapa *vs.* Mankia, 8 Bom. H. C. R. A. C. J. 27, a suit was held to lie by one of the *mahars* of a village against his fellow *mahars* for damages for obstruction by them in his enjoyment of his share of all the customary perquisites (the carcasses of dead cattle &c), the Court observing that, "though the owner of the cattle is not bound by the *mahars'* rights, yet as between themselves, a *mahar* has a right of action against his brother *mahars* for a share in the proceeds of the perquisites of the *watan*, which is their common inheritance."

However if fees be paid to a person as a member of the collective body of *purohits* of which he is a unit, other members may claim their share of the receipts as money had and received; Jowahir *vs.* Bhagu, (1857) Cal. S. D. A. 362. If a *jajman* or a party pays a sum as fees to an individual, so as to show that they were intended for the individual, no claim can be preferred by others, though they may be joint heirs in the family *purohitship*, to the property so received; but if the fees be paid to a person only as a member of the collective body of which he is an unit, the claim is admissible, and should be decided in accordance to the rules by which ordinary cases of inheritance are decided. Effect may also be given to a contract, or any other relation existing between two or more *purohits*, binding them to divide the collections between themselves. Thus in Becharam *vs.* Thakoormone, 8 Beng. L. R. 54, a suit was held to lie by the widow of one of the four joint brothers for the share of the fees

realized by them for performing certain ceremonies at a particular *ghat* on the occasion of burning the dead there. And a suit will lie against priests, if the suit is brought on the ground that partnership existed between the defendant and the plaintiff, or that they are bound by a contract, express or implied, to give plaintiff a certain share of their earnings. But where there is no such partnership or no such contract, a suit will not lie even against a priest who has been but newly appointed by the *jujman*, by any member of the family of the old priest simply on the ground of a hereditary right to perform ceremonies of a particular family; because the fees paid by a *jujman* to the priest who officiated at ceremonies performed by him are, according to the custom prevailing in Hindu families, and also according to Hindu law, voluntary gifts paid for work actually done or for the sake of spiritual benefit supposed to flow to the donor when his gifts are accepted by pious and holy Brahmins; Mugjoo *vs.* Ram Dyal, 8 Beng. L. R. 50. In Chuni *vs.* Birjo, 13 C. L. R. 49, a suit was held to lie for a declaration of the plaintiff's half share in the *jujmanki* right in certain *mouzahs* on the ground of inheritance, against certain other priests. But the decision will not bind the *jujmans* who will have full liberty to appoint either the plaintiffs or the defendants as their priests. In Ram Ruttun *vs.* Gori, (1872) P. R. No. 38, it was held, that legally no one but the *purohit*, to whom such fees are given, had a right to them. But if circumstances exist arising out of that *purohit's* relation to

others, or out of his express or implied promises, or his ancestral or joint family connection with others, which create an obligation to pay over to any one else a portion of the earnings of such *purohit*, such circumstances may be shown which may give rise to a legally enforceable claim. The same view was taken by the Full Bench of that Court in Gobund *vs.* Sadda, (1877) P. R. No. 7, in which it was observed that the position of an hereditary *purohit* as carrying with it the good-will of an established professional connection is still valuable, and accordingly it is not uncommon for the heirs of a deceased *purohit* to enter into agreements among themselves as to the seasons in which they will officiate, and as to the manner in which they will share the fees. And the Allahbad High Court held in Doorga Pershad *vs.* Budre, 6 N.-W. P. H. C. R. 189, that the result would be the same, if there was no contract, but reference by the members of the family of the disputes to an arbitrator, and an award made by him as to each member taking the gifts by turns during a certain period; and that a suit will lie in such a case to recover a gift presented to some of the defendants during a period in which under the terms of the award, the plaintiff was entitled to the family gains. On the same principle, when voluntary offerings have actually been contributed to a fund, the refusal to a person of his right to participate in the fund causes a damage for which a suit may be brought; Krishnasami *vs.* Krishnama, 5 Mad. 313. Rights connected with per-

sonal offices however are incapable of transfer. In Keyake Ilata *vs.* Yadattil, 3 Mad. H. C. R. 380, the vendee of a *karaima* right was held not to be able to compel the trustees of a pagoda to admit him to the office and give him the emoluments. In Jhummun *vs.* Dinoonath, 16 W. R. 171, a right to officiate at funeral ceremonies was held incapable of transfer. And the office of family *purohit* does not appear to be recognized as alienable even in the Bombay Presidency. Dayaram *vs.* Jethabhat, 20 Bom. 784.

The law appears to recognize offices connected with a certain *temple*, *ghat*, or *locality*, which are essentially distinct from personal offices. In Sheo Suhaye *vs.* Bhooree Muhtoon, 3 W. R. 33, it was held that a suit will not lie for fees voluntarily paid to one man, on the part of another, when there is no contract. But when the parties claim the collections of a shrine which are the offerings of a certain temple (on the express ground of *Mourosse Milkant* or hereditary property), either in right of property in the place, or of lawful and established office attached to it, it is well established that the suit will lie. Thus from early days suits have been allowed to lie for the exclusive right to the privilege of administering *purohitam* to pilgrims resorting to Rameshwaram; Ramasawmy *vs.* Venkata Achari, 9 M. I. A. 348. A suit has been held to lie for a declaration of a person's right to perform the duties of a *pujari* and to receive the proceeds of a *mandir*; Pranshanker *vs.* Prannath, 1 Bom.

H. C. R. 12. In Mitta Kunth *vs.* Neerunjan, 14 Beng. L. R. 166, it was held that the right of a plaintiff to perform the worship of an idol is property subject to partition, the joint owners being entitled to worship in turn; and in Debendronath *vs.* Odit Churn, 3 Cal. 390, the Court held that refusal to deliver up an idol, so as to prevent the priest from performing his turn of worship, gave the aggrieved party a right to sue for damages. The same view as to the partibility of the office of a temple was taken in Mancharam *vs.* Pranshanker, 6 Bom. 298, in which it was observed that modern custom has sanctioned such partition as can be had of such property by means of a performance of the duties of the office, and the enjoyment of the emoluments, by the different co-parceners by rotation.

Such an office though partible is not alienable. It is not such property as might he attached and sold in execution of a decree. It has been held that a judgment debtor's right as *shebait* to perform the services of an idol cannot be sold in execution of a decree, nor can his rights to the surplus profits of the *sheba* be sold so long as that right is unascertained and uncertain; Juggurnath Roy Chowdhry *vs.* Kishen Pershad Surma, 7 W. R. 266; see also, Roodurman *vs.* Damodur 1 Hay's Report 365; Malika Dasi *vs.* Ratanmoni, 1 C. W. N. 493; Mulchand *vs.* Dhakan singh, (1862) N.-W. P. S. D. A. 314; Drobo Misser *vs.* Srineebash Misser, 14 W. R. 409; Kalichurn Gir Gossain *vs.* Bungshee Mohun Dass, 15 W. R. 399. In Jhummun

Pandey *vs.* Dinnanath Pandey, 16 W. R. 171, it has been held that a *birth moha Brahminy* or right to officiate at funeral ceremonies is incapable of transfer. The same view is taken by the Madras Hiigh Court. In Keyake *vs.* Yadattil, 3 Mad. H. C. R. 380, a *kariama* right in a pagoda was declared unsaleable. In Venkatarayar *vs.* Srinivasa Ayyangar, 7 Mad. H. C. R. 32, it was held that the office of *Archakar* in a temple could not be alienated when the alienation contemplated the introduction of a different ritual. The ground of these decisions is that the office involves the performance of Hindu religious worship, and the purchase might be made by Christians or Mahomedans or other persons, whose status might altogether unfit them for the performance of the worship. And the alienation of a religious office to a person not in the line of heirs, though otherwise qualified for the performance of the office, is prohibited in Madras on the ground that it should not be excepted from general rule against the alienation of hereditary religious trusts and offices; Kuppa Gurukal *vs.* Dorasami Gurukal, 6 Mad. 76. Because a religious trust is *prima facie* inalienable. The succession to the office is governed by the will of the founder, and when there is no direct evidence on that point, by usage of the particular institution from which the founder's wish may be inferred. And when the holder of a religious office alienated it to one out of four persons who were entitled to succeed him, held that the alienation was invalid although a mere reliquish-

ment in favour of a sole next heir by way of anticipating his legal right might be valid, Narayan Prabhu *vs.* Ranga Bhatte, 2 M. L. J. 19. And the decision in Rajah of Cherakal *vs.* Mutha Rajah, 7 Mad. H. C. R. 210 regarded the sale of religious trusts illegal. The Privy Council dismissed the appeal from this decision of the Madras High Court on the ground that no custom which could qualify the general principle of Hindu Law that such trusts are unsaleable has been established in the case, and that the case disclosed that the sale was for the pecuniary advantage of the trustee—a circumstance which would invalidate any such custom if it had been shown, (1 Mad. 235). In Konwar Dooganath Roy *vs.* Ramchandersen, 2 Cal. 341, there is a dictum by the Privy Council that although in the case of family idol the concensus of the family might give the existing dedication another direction, this could not be done in the case of public temple by the concensus of the trustees. The proposition is then that the alienation of religious trusts and offices is generally illegal; although in some special circumstances it may be held valid. An instance in which such an alienation is upheld is afforded by Mancharam *vs.* Pranshankar, 6 Bom. 298. The Judges in that case upheld an alienation of an hereditary office made in favour of a person standing in the line of succession and not disqualified for the performance of the office by personal unfitness. And it was held in Ranga Sami *vs.* Ranga, 16 Mad. 146, that as a rule the religious office cannot be the subject of a sale, but a decree

may be given in favour of the purchaser of a *mirasi* office in a temple, when the question of its inalienability is not raised. The same reason would militate against an unrestricted right of alienation by private sale or gift, an improper alienation being some times such as to defeat the object of the endowment, or even inconsistent with the presumed intention of the founder; Rajah Vermah Valia *vs.* Ravivurmah Kunhikutty, 1 Mad. 235. These objections do not apply to an alienation to a member of the founder's family in the line of succession; and in Sitaram Bhat *vs.* Sitaram Ganesh, 6 Bom. H. C. R. A. C. J. 250, the sale of a hereditary priestly office was upheld where the purchaser was the next in succession. In Mancharam *vs.* Pranshanker, 6 Bom. 298, a devise of an office by will to a possible heir was held to be valid.

The ordinary test of an office is, whether there is any specific pecuniary benefit, however small, attached to it and claimable in the nature of wages. The right to such benefit has always been held to be a question which the Civil Courts can take cognizance of; Narasimma *vs.* Sri Kristna Tatachariar, 6 Mad. H. C. R. 449. The office is not the less so, however, if no fees are attached to it; and it will be so not only if it is not profitable, but involves out of pocket expenditure. It was thus held in Krishnasami *vs.* Krishnama, 5 Mad. 313, that where the right to a particular office in a temple is established, the right should be protected by processual remedies, even when no loss of specific pecuniary benefit be established. In Mamat

Ram *vs.* Bapu Ram, 15 Cal. 159, it was observed that, "if it be a charge or trust for the performance of particular duties in a temple or the like, it would be an office within the meaning of s. 11 of the Code of Civil Procedure of 1882, whether any emoluments are attached to it or not"; see also, Srinivasa *vs.* Tiruvengada, 11 Mad. 450. In Sayad Hashim *vs.* Huseinsha, 13 Bom. 429, the Court observed that there was no case laying down that a suit for an office will not lie, because the office is a religious one to which no fixed fees are attached. Dignity and privileges connected with office are not identical with office, and a suit for them will not lie, unless they involve a claim to property; Narayan Vithe *vs.* Krishnaji, 10 Bom. 233.

But suits involving a right to property or to an office have always been allowed to lie, even when they involve questions as to ritual; Subbaraya *vs.* Chellappa, 4 Mad. 315. Where the plaintiff and the defendant are jointly entitled by rotation to the profits from an idol in the defendant's temple, and the defendant obstructed the plaintiff's use and worship of the idol there the plaintiff was declared entitled to remove to her own house for and during the period in which she was entitled to the profits; Dwarkanath *vs.* Janobee, 4 W. R. 79. And in Jangu *vs.* Ahmed Ullah 13 All. 419, a suit was held to lie in Civil Courts, when it was for a declaration of the plaintiffs' right to repeat the word *amen* aloud in the mosque, and to restrain the defendant from interfering with them in the performance of their religious duties. Similarly in Fazl

Karim *vs.* Maula Baksh, 18 Cal. 448, the Privy Council held that a suit would lie in which the chief prayer was for a declaration that the plaintiffs were entitled to deliver up the Friday oration, and to perform the daily prayer before the congregation from the pulpit and *Musalla* as *Amil-bil-Hadis* with *Rafa yadin* (raised hands) and a loud *amen*.

The word property will apparently include a public right, and suits for the exercise of such rights are allowed to lie in Civil Courts; Mohamed Abdul Hafiz *vs.* Latif Hosein, 24 Cal. 524. Plaintiff in a suit claimed a declaration that he was entitled to hoist a certain flag and that defendant had no right to interfere with it. He alleged that the defendant had pulled it down and carried it away. Held that the plaintiff was only vindicating common law right and was entitled to maintain the action inasmuch as he did not claim any exclusive privilege. Rajashah *vs.* Husain Shah, 7 A. L. J. 83; 7 Ind. Cas. 314. The word property however, refers to property of an appreciable value, and a person cannot by merely affixing a money value give himself a right to sue, which he does not otherwise possess; Narayan Vithe *vs.* Krishnaji, 10 Bom. 233.

1. SUITS IN RESPECT OF RELIGIOUS OFFICES TO WHICH FIXED FEES ARE ATTACHED.

(1) *A suit for damages against the intruder of the office of village priest*:—The plaintiff sued for damages on the ground that the defendant had officiated as a village

priest at Rede, in the Ratnagiri district, and taken the fees, whereas the right belonged solely to the plaintiff and his family, of which the defendant was not a member. Held that the suit is brought against the intruder into the office of village priest. If the plaintiff establishes that the office exists, that he is sole or part holder of it, that there are emoluments attached to it, and that the defendant has without right, acted in the office, and received the emoluments or some of them, he (plaintiff) is entitled to damages for the intrusion. The office of a village priest is one which may well be established by grant or prescription, and that if a person, not entitled assumes to act in the office and receives fees, he may be made to refund them. In the same manner the villagers employing a priest independently of his character as *gram Upadhya* or *joshi*, must if they have ceremonies performed in which the office holder ought to take part, pay the fees, whether they employ him or not. Not that it is compulsory for a villager to employ the office holder for performing the ceremonies, but if he employs another for the ceremonies and pays the fees to him, he must pay over again to the office holder. In many cases, though the payment of the fee is compulsory, yet according to Hindu Law, the amount appears to be optional. None of the English decisions go to the length of saying, that where the payment to be made depends solely upon the good will or conscientiousness of the donor to whom the service is rendered, an action can be maintained against the intruder

who has received what that law regards as a mere gratuity; but the rule might be quite different where, as under the Hindu system, the amount of the priest's fee is left to the conscience and means of the person for whom the functions are performed. And the law, therefore, will not refuse a remedy to a village priest against the usurper of his office, mere because the amount of damages in money does not admit of precise estimation, for in such cases there it legal wrong, and it cannot be but that the office holder has suffered in some extent by the intrusion. What the damage sustained has been is a matter for computation according to circumstances of each case; but as there has been in such a case undoubted injury, the law will not refuse a remedy merely because its amount in money does not admit of precise estimation. Vithal Krishna Joshi *vs.* Anant Ramchandra, 11 Bom. H. C. R. 6.

(2) *Invasion of the privilege of a joshi to officiate at a marriage* :—The plaintiffs claim the right to officiate as *Joshis* in the village of Otur, in the Poona Collectorate, and seek to recover damages from the first defendant as residing in the same village, on the ground that on the occasion of the marriages of his two daughters they were ready to conduct the usual ceremonies, but were not allowed to do so, nor were the fees paid them. Held that the village *joshi*. who is entitled by hereditary right to perform religious ceremonies at his *yajman's* house, can recover his fees, if the ceremonies are performed, no matter by whom they may be performed. Waman Jagannath

Joshi *vs.* Balaji Kusaji, 14 Bom. 167.

(3) *Priest wrongfully officiating for another* :— Where a priest wrongfully officiates for another, and receives fees he is bound to account for them to the rightful priest, where such fees are by custom attached to the office. It has also been held that the sale of hereditary priestly office will be upheld where the purchasers are next in succession from the vendor to such office. Sitaram Bhat et al *vs.* Sitaram Ganesh, 6 Bom. H. C. R. A. C. J. 250.

(4) *Damages against the intruder into an office of joshi* :—The plaintiff brought a suit to recover damages alleging that he was the *vatandar joshi* of defendants' village, and as such was entitled to certain fees from the Defendant No. 1 and No. 2, on the occasion of the marriage of defendant No. 2 ; but that the fees were paid by them to and received by defendant No. 3, who had no right whatever to such fees. The plaintiff also prayed for an injunction against defendant No. 3. Held that the burden of proving that the *vatandar joshi* is not entitled to officiate and take fees in the family of any particular caste, lies on the person asserting exemption. The *vatandar joshi* of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him ; but the Court will not grant any injunction against such intruder, which would have the effect of forcing upon any section of the community the services of a priest whom they are

unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. Raja *vs.* Krishnabhat, 3 Bom. 232.

(5) *Suit by a village priest against his yajman* :—Plaintiffs sued the defendants for a declaratory decree alleging that they were entitled to perform certain ceremonies, and receive fees for the same. Held that in the presidency of Bombay a village priest can maintain a suit against a *yajman* who has employed another priest to perform ceremonies, and recover the amount of the fee which would probably be payable to him if he had been employed to perform such ceremonies. As a rule the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances. Dinanath Ab aji *vs.* Sadashiv Hari 3 Bom. 9.

(6) *Right of hereditary joshi to recover marriage fees from an intruder* :—Where a person claimed to be the hereditary joshi of a certain village and to recover from the intruder certain fees payable to the joshi but payed to the intruder, held that the fact that emoluments are claimed makes the dispute one of civil nature within the meaning of s. 11 of the Code of Civil Procedure, Act XIV of 1882, and that therefore the joshi's suit to recover the fees is maintainable. Yesvantrao *vs.* Bhaskerao Patwari, 3 N. L. R. 47.

(7) *Right of a purohit to enjoy joint profits* :—The obligation upon *jajmans* to employ a particular *puro-*

hit to perform the ceremonies at the burning of Hindu bodies may be a matter of conscience, and not one which the court of law can enforce, but the question of the right to enjoy the joint profits accruing from the performance of such ceremonies is cognizable by a Civil Court. Becharam Banerjee *vs.* Sreemuttee Thakoormonee, 10 W. R. 114.

(8) *Suit for damages for loss of fees appurtenant to the office of* Kazi *in* Bombay :—The plaintiff, alleging that he was the holder of the office of Kazi of Bombay and entitled as such to the fees belonging to it, sued the defendant for damages, stating that the defendant had disturbed him by exercising the office and taking the fees attached to it. The defendant contended that the suit was not maintainable. Held, that the sums received by the Kazi of Bombay in respect of his office of Kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are, therefore, sums in respect of the privation whereof by a wrongful intruder an action, either for money had and received, or for disturbance in the office, will lie. Held also, that in awarding the damages, no account should be taken of any *gratuities* that may have been received by the defendant, but of the fees only. Muhammad Yussab *vs.* Sayad Ahmed, 1 Bom. H. C. R. App. XVIII.

(9) *Claim to be the* Aya *of a* math *and as such to emoluments* :—The plaintiff sued for a declaration that he was the Hiramath *aya* of a village, and as such he was

entitled to receive fees on the occasion of marriages in Lingayat caste in that village. The defendant having failed to invite the plaintiff to his sister's marriage, and to pay him the customary fees, the plaintiff sought also to recover the same from him. Held, that the suit will lie, as the only question for decision was whether or not the plaintiff was the *aya* of Hiramath entitled as such to receive fees on the occasion of the marriages. This is a question of purely civil nature, in which the right to an office and thereby to certain fees is in contest, and its decision in no way involves any interference on the part of the Court in a caste question, and this is so even if the contention that the caste has the right of appointing the *aya* be assumed to be correct. Gursangaya *vs.* Tamana, 16 Bom. 281.

(10) *Suit by a dancing girl for hereditary office with emoluments*:—The suit was brought by a dancing girl to establish her right to the *mirasi* of dancing girls in a certain pagoda, and to be put in possession of the said *miras* with the honours and perquisites attached therto, as set forth in the schedules to the plaint annexed. The defendants denied the claim. Held that in this case the question of the existence of a hereditary office with endowments, or endowments attached to it, ought to be inquired into, as that would materially affect the question whether plaintiff had sustained injury by the interference of the first defendant. Kamalam *vs.* Sadagopa Sami, 1 Mad. 356.

(11) *Suit to recover damages for wrongfully receiving rights and appurtenances to the office of Khot* :— A claim by a *Khot* for damages by reason of the defendant having wrongfully received cocoanuts and betel-leaves and a marriage fee from a man of the Bhandari caste, and thereby infringing the customary rights or appurtenances to the plaintiff's office of *Khot* is not a caste question. They are questions of customary rights and appurtenances to the office of *Khot*, and as such, are enforceable by Civil Courts. Aba bin Raghuji *vs.* Devji bin Daji Bom. H. C. P. J. 1884 p. 297.

(12) *Suit for an office and dignities attached to it with emoluments* :—The plaintiff as purchaser of certain dignities and emoluments appertaining to the office of *Malji Dharmakarta miras* in the Conjevaram Devraj Swami-devastanam, sued the trustees of the temple, for a declaration of his right to the incomes and *Swatantrams* appertaining to the miras and for recovery of arrears of such incomes and *Swatantrams* unlawfully withheld from him by order of the defendants. Most of the items claimed by the plaintiff were really income possessing a money value, but some of them savoured of mere dignities. But it appeared that these dignities had always been sold and mortgaged by the office-holders for the time being along with the incomes, and that such sales and mortgages had been recognised and enforced by Civil Courts, and that such dignities had always been treated as part and parcel of the office and inseparable from the incomes at-

tached thereto. Held :—that the plaintiff was entitled to the declaration sought for and for the recovery of the arrears claimed. Krishnaswami Thatha Chariar *vs.* Appanaiyangar, 7 M. L. J. 23.

(13) *Declaration of a right of a Pujari of a Mandir* :—The plaintiffs instituted a suit praying for an injunction to restrain the defendant from interfering with them in the exercise of the office of Pujaries in a Hindu temple called Ramjimandir in the city of Surat, and in the receipt of the proceeds of the same, and for a declaration of their right to the office and the receipt. Held that an action will lie to obtain a binding declaration of the persons' right to perform the duties of *pujari*, and to receive the proceeds of a mandir. Pranshanker *vs.* Prannath Mahanand, 1 Bom. H. C. R. A. C. J. 12.

(14) *Right to officiate as priests in a temple and to receive offerings* :—The plaintiffs sued to have their right declared to officiate as priests in a certain temple, and to receive the offerings in alternate years, alleging that the defendants had obstructed them in the exercise of that right. Held that the suit will lie in the Civil Court for the declaration of the plaintiff's right to officiate, in alternate years, as priests in a temple and receive the offerings to the idol. Limba *vs.* Rama, 13 Bom. 548.

(15) *Suit for emoluments attached to the office* :—The plaintiffs, members of the Tengalai sect of Brahmins, sued the defendants, the trustees of a temple at Conjeve-

ram, for the recovery of the money value of certain holy cakes which they alleged they were entitled to receive from the defendants for commencing recital of a Sankrit verse and reading a certain Tamil chant, which office they (plaintiffs) had the hereditary right of performing in the said temple. It was held that the suit would lie, the principal question in the suit being the claim set up by the plaintiffs to the pecuniary benefit of which they were deprived. Narasimma Chariar *vs.* Shrikristna Tata Chariar, 6 Mad. H. C. R. 449.

(16) *Suit for a declaration and enforcement of a right to officiate as shebait and to share the offerings* :— When a member of a family brings a suit against another for the declaration and enforcement of a hereditary right to officiate as shebait or priest, at the worship performed by votaries at the foot of a certain tree, and to share the offerings made at such worship, such a suit is maintainable having regard to section 11 of the Code of Civil Procedure of 1882. Dino Nath Chuckerbutty *vs.* Pratap Chandra Goswami, 27 Cal. 30.

(17) *Suit for the establishment of title to certain offerings* :—A suit in which the offerings claimed are of a substantial value as emoluments and are not mere tokens of dignity, is entertainable by a Civil Court. Thus in Kalikanta *vs.* Gouri Prosad, 17 Cal. 906, the plaintiffs sued the defendants for the establishment of title to certain offerings, being goats sacrificed on the fourth day of each month in a certain temple, and based their claim on a

certain custom. It was submitted that the goats that were sacrificed were not voluntary offerings made by pilgrims, but were regular offerings made out of temple funds. Held, that the suit was of a civil nature and cognizable by Civil Courts. This case was distinguished from that of Narayan *vs.* Krishnaji, 10 Bom. 233, where the *mans* claimed were mere tokens of dignity to which no profits or emoluments were attached.

(18) *Dancing girl's offerings to the idol* :—A dancing girl's offerings to the idol having been rejected by the officiating priest of the temple on the ground that she had been guilty of misconduct; held that, if the former had been wrongfully prevented from taking part in the public worship, she was entitled to relief from a Civil Court. The members of a sect are entitled, subject to the rules made by the duly constituted authorities of the sect, to take part in the public worship of the sect, and if any one of them is wrongfully prevented from so doing, he is entitled to seek from the Civil Courts such remedies as they can afford him. Vengamutha *vs.* Pandaveswara Gurukal, 6 Mad. 151.

(19) *Suit for offering sacrifice* :—A. & B. were the owners of a zamindari within which was the idol X. According to the immemorial custom, the flesh of the first goat offered to X. by the *sabaits* was taken by the zamindars. Upon the death of A. the *Sabaits* refused to allow his representative to have a share of the goat. C. sued for the declaration of his right to share in the flesh of

the sacrificial goat. Held that the suit was maintainable. Durgacharan Pathak *vs.* Rajabala Debi, 4 C. L. J. 469.

(20) *Suit for pecuniary benefits in respect of a performance of religious services* :—A claim to certain religious benefits and payments in kind which the plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Court of justice is bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidently the right to perform the services, the Court must try and decide that right. Krishnama *vs.* Krishnasami, 2 Mad. 62. P. C.

(21) *Emoluments for religious rituals* :—The suit related to a contest as to the right to recite certain mantras in a temple and to receive the emoluments given. On an objection being raised that the matter could hardly be considered as the subject of a civil suit, their Lordships of the Privy Council observed that there was a question of emoluments which could be preceded by questions of purely religious rituals without being barred by them. Venkata Varatha Thathachariar *vs.* Ananthachariar, 16 Mad. 299. (P. C.); 3 M. L. T. 150.

(22) *Right to an office at a festival* :—A suit for an injunction to prevent the defendant from interfering with the plaintiff's right to present water and a gold crown to certain persons at a certain festival, is cognizable by a Civ-

il Court. And where it is found that plaintiffs have a status as holders of a certain hereditary office in the temple, and that it has been violated, they are entitled to be protected by processual remedies as are available in the circumstances of the case, even though no legal dues or damages are payable to them. Shrinivasa *vs.* Tyravengada, 11 Mad. 450; see also, Subbaraya *vs.* Venkatanarasu, 2 M. L. J. 83.

(23) *Suit for declaration and injunction as to stotrapatam office* :—A suit for a declaration that plaintiffs (Vadagalais) are entitled to recite *stotrams* in the Conjevuram temple and for an injunction restraining the Tengalais from interfering with their strotrapatam is cognizable by Civil Court. Though damages cannot be awarded when the offerings are voluntary, when once the voluntary offerings have been contributed, and the refusal of a person's right to participate in the fund causes damage the Court will be entitled to award damages in those cases. Bashiakar *vs.* Venkata Varada Thatha Chariar alias Chinnaswami Thathachariar, 8 M. L. T. 137; 20 M. L. J. 530; 7 Ind. Cas. 148.

(24) *Suit by a hereditary purohit for declaration of the right to officiate and for damages for loss of fees in Madras* :—

The ancestor of plaintiff was appointed purohit of the town of P. by Government and obtained prior to 1810 a mirasi inam as the emolument of the office. By an agreement made between the descendants of the origin-

al purohit, the families in the town of P. were divided between them and that of the defendant's fell to the lot of the plaintiff. The plaintiff suid for a declaration of his right to officiate as the purohit of the defendants and for damages for loss of fees caused by the defendants employing another purohit. Held that the plaintiff had no cause of action. In this case it is admitted by the plaintiff that the grant does not award any fees to be paid to plaintiff's ancestor by all persons performing ceremonies at which a purohit attends: it is also admitted that the grant does not provide that the Hindu inhabitants of P. should not employ any purohit except the original grantee and the descendants, or that, if the inhabitants did employ any other purohit to perform ceremonies, the original purohit, or his descendants, should be paid fees, although he or they did not perform such services. The Bombay case of Dinanath Abaji *vs.* Sadashiv Hari, 3 Bom. 9, recognizes such a claim, but there they are bound by authorities to hold the suit maintainable. But such claims are denied by the High Courts of Bengal and North-Western Provinces. Ramkrishna *vs.* Ravga, 7 Mad. 424.

(25) *Suit for honours appertaining to an office in a temple:*—In a case where plaintiff sued to establish his right to receive certain honours in a temple as appertaining to his office as officiating priest of the temple, and to recover damages for the invasion of his right; held, that the suit of the plaintiff to recover damages for the invasion of his right appertaining to an office in the temple

was one which it was competent to the Civil Court to entertain. Archakam *vs.* Udayagiry; 4 Mad. H. C. R. 349.

(26) *Suit for honours attached to a religious office and to regulate rituals* :—Civil Courts have jurisdiction to entertain a suit for honours, if they are claimed as attached inseparably to an office as part of its emoluments and not simply accorded to its holder as marks of respect which might be extended to any person to whom the same degree of respect is due. In declaring that the plaintiff is entitled to honours the decree must declare the specific honours to which the plaintiff is entitled. A general declaration that the plaintiff is entitled to the honours appropriate to the office will not suffice, but the Court must, to protect the plaintiff in the enjoyment of the office, declare what is the honour to which the plaintiff is entitled. A Civil Court can declare the rituals to be followed in any case where it is necessary to protect to the plaintiff the enjoyment of his office. Shri Rangachariar *vs.* Rangu Sami Battachar and others, 32 Mad. 291.

II. HEREDITARY RIGHT TO AN OFFICE TO WHICH NO EMOLUMENTS ARE ATTACHED.

(1) A suit for the establishment of a right to the hereditary title of musicians to a *Satra* will lie under s. 11 of the Code of Civil Procedure of 1882, notwithstanding that the right sought to be established is one which brings in no profit to those claiming it. Mamat Ram Bayan *vs.* Bapu Ram Atai Bura Bhakat, 15 Cal. 159.

(2) *Suit for an office of* Kazi *and* Khatib *to which no fixed fees are attached* :—The plaintiff, alleging that he is the vatandar *Kazi* and the *Khatib* of Gadag, and that the defendant obstructs him in the exercise of the latter office, sues for a declaration of his sole right to hold the office of *Khatib* and for an injunction to restrain the defendant from obstructing him in the enjoyment of that office. Held that a suit for an office will lie, even though the office be a religious one, to which no fixed fees are attached. Sayad Hashim Saheb *vs.* Huseinshah, 13 Bom. 429.

(3) *Suit by a successor to the hereditary office* :—In a suit by the plaintiff to recover possession to the office of *Bhandari* (treasurer), a hereditary office in a temple, it was found that the plaintiff's father, the last permanent holder of the office, had been dismissed for misconduct and the defendant had been appointed by the Temple Committee temporarily to do the office. The plaintiff was a minor at the date of his father's dismissal and brought the suit immediately on attaining majority. When this suit was filed, the plaintiff's father was alive and the Temple Committee had not appointed any body else permanently to the office. Held :—that the plaintiff was entitled to the office and his suit should be decreed. Gopinadha Panda *vs.* Ramachandra Punigrahi, 6 M. L. J. 255.

(4) *Suit for a managership of a bathing ghat* :—Plaintiff sued for a declaration that as successor to his *guru*, he was entitled to the managership of a bathing

ghat. The evidence adduced by him did not prove anything more than that he and his *guru* had for several years occupied a small room on the top of the *ghat*, and that they had got the *ghat* swept and repaired. Held that the plaintiff was not entitled to the declaration prayed by him. (Maina *vs.* Brijmohun, 12 All. 587 referred to). The office of manager on a bathing *ghat* is not a hereditary one passing like the office of *mahant* of a *mat* from *guru* to *chela.* Basdes Sahai *vs.* Damodar Nund, 1 A. L. J. 44.

III. SUITS FOR RIGHT TO EXCLUSIVE WORSHIP.

The right of exclusive worship of an idol at a particular place set up by a caste is a Civil right for adjudication by the Civil Court, and not a caste question. The right is one which the Court must guard, as otherwise all high caste Hindus would hold their sanctuaries and perform their worship only so far as those of the lower caste chose to allow them.

(1) *Exclusive right of entry and worship in the sanctuary of a temple* :—Four persons of Chitpavan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of a privileged caste, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship there. They prayed for a declaration of their right and an injunction

restraining the defendants from interfering with it. Held that the right of exclusive worship of an idol at a particular place set up by a caste is a civil right for adjudication by the Civil Court, and not a caste question. The meaning of s. 21 of Regulation II of 1827 is that the internal economy of a caste is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privilege, may arise can be taken cognizance of. The right is one which the Court must guard, as otherwise all high caste Hindus would hold their sanctuaries, and perform their worship only so far as those of the lower caste chose to allow them. Anandrav Bhikaji Phadke *vs.* Shanker Daji Charya 7 Bom. 323.

(2) *Claim to the exclusive right to perform certain portions of religious worship in a Hindu temple*:—It is not the duty of a Civil Court to pronounce on the truth of religious tenets, nor to regulate religious ceremony; but in protecting persons in the enjoyment of a certain status or property, it may incidently become the duty of the Civil Court to determine what are the accepted tenets of the followers of a certain creed, and what is the usage they have accepted as established for the regulation of their rights *inter se*. A Civil Court may take cognizance of the claim of the plaintiffs to the offices to which they assert their exclusive right, may secure them in the enjoyment of that right, and may award them damages for the invasion of that right in so far as such

damages are not too remote and too uncertain. A claim to exclusive right to perform certain portions of the religious worship in a Hindu temple and to restrain a rival sect from joining in such worship otherwise than as ordinary worshipers can be enforced by the decree of a Civil Court. Krishnasami Tatachariar *vs.* Krishnamachariar, 5 Mad. 313.

IV. ALIENATION OF HEREDITARY OFFICE.

(1) When estates or emoluments are attached to a hereditary office and represent the remuneration to be enjoyed by the office-holder for the time being in return for his performance of the duties of his office, such estates or emoluments are inalienable by any office-holder beyond the term of incumbency in the office. When he dies or retires from office, the right to officiate devolves, as if it were land and the estates or emoluments attached to the office inseperably devolve upon it. The office-holder may, of course, transfer his own right, title and interest, which is necessarily only an estate for the terms of his life; but all rights created by such transfer cease, and determine with his death. Even where such a transfer is made to a person who happens on the death of the transferor to be the heir to the office, from and after the date of such death, the transferee will hold by right of inheritance and not by virtue of the transfer. Hence when the estates or emoluments are attached to the hereditary office of *joshipan* in Berar as remuneration for performing the duties thereof, they are insepar-

able from and necessarily devolve upon such office. Therefore, an office-holder cannot alienate any part of such estates or emoluments for a term beyond his own incumbency in the office. (Kuppa Gurukal *vs.* Dorasami Gurukal, 6 Mad. 76 followed). Rajaram *vs.* Waman 5 N. L. R. 15; 1 Ind. Cas. 244.

(2) When an alienation of a hereditary office is made by the mother-in-law in favour of her son-in-law as she herself could not perform the ceremonies and other duties of the office, the alienation conveys the rights as a manager to the son-in-law at least during her life-time. Subraya Kakaranaya *vs.* Subraya Padyaya, 8 M. L. T. 325.

V. PROPERTY IN THE IDOL WORSHIP.

The right to perform the religious services of an idol is no doubt in a sense property.

(1) *Right to deal with* idol:—A suit was instituted for a declaration of the plaintiff's right to certain idol to be carried in procession in accordance with custom, and for recovery of damages for the injury sustained. Held that the suit will lie, the Court observing that in the eye of law the idols are property and the right to deal with such property must in the event of disputes arising be determined by Civil Courts. In this case the plaintiff was the Dharmakarta of the temple and entitled to maintain the suit, by reason of the property in the idol being vested in him as a trustee. Subbaraya Gurukal *vs.* Chellappa Mudali, 4 Mad. 315.

(2) The plaintiff and the defendant being jointly entitled by rotation to the profits from an *idol* in the defendant's temple, and the defendant having obstructed the plaintiff's use and worship of the idol in his temple, the plaintiff was declared entitled to remove the idol to her own house during the period that she was entitled to the profits from it. Dwarkanath Ray *vs.* Jannobee Chowdhrain, 4 W. R. 79.

(3) *Right to turn of worship* :—A refusal to deliver up an idol, whereby the person demanding it was prevented from performing his turn of worship on a specified date gives the party aggrieved a right to sue for damages. A turn of worship is described as property by Couch C. J. in Mitta Kunth Audhicarry *vs.* Neerunjun. 14 B. L. R. 166. Debendronath Mullick *vs.* Odit Churn Mullick, 3 Cal. 190.

(4) *Right to joint worship* :—Under the Hindu law Places of worship and sacrifices are not divisible. The parties can enjoy their turn of worship, unless they can agree to a joint worship, and any infringement of the right to a turn in the worship can be redressed by a suit. Anund Moyee Chowdhrain *vs.* Boy Kanthnath Roy, 8 W. R. 193.

(5) *Right to entry into temple for worship* :—The first defendant, who was excommunicated from caste for having married a Numbudri girl, was restored to caste by second defendant, the spiritual head of the community. The temple *moktesars* sued for a declaration that the second

defendant's order did not bind the temple, and for an injunction restraining the first defendant from entering the temple. Held that the mere fact of the second defendant having passed the order, did not give the temple moktesars any cause of action; that the right of entry into a temple for worship is a civil right and can be adjudicated only by Civil Courts. Uppangala Subraya Bhatta *vs.* Bedradi Subraya Bhatta, 7 M. L. J. 190; 5 Ind. Cas. 57.

(6) *Right to worship in a temple* :—The right to worship in a temple is enforceable in a Civil Court, but that right can be exercised only during hours of public worship. Where the plaintiff in his suit merely alleges an immemorial custom to make offerings to an idol at a particular place, but does not prove that he has acquired any right thereunder, no relief can be given in respect of such a claim. The right to enforce the stopping of an idol in front of a person's house is not part of the right of worship by a member of the community for whose benefit the temple has been dedicated, and such a right is not cognizable by the Civil Courts. Sri Krishnaswami Iyengar *vs.* Rangaswamy Iyengar 19 M. L. J. 743.

(7) *Alteration of religious marks changing the predominating influence in a temple* :—The plaintiff a Dharmakarta of a Vaishnav temple, sued his co-trustees for an injunction prohibiting them from changing the form of, or in any way interfering with the Tengalai *namans* in the temple and directing them to remove from temple a copper image of Vendanta Desikar, the *guru* of the Vad-

agalai sect, introduced by them. There was already in the temple a stone image of the same *guru*. Held that the stone and chunan namans were part of the property of the temple vested in the trustees, and their removal or their alteration was an interference with the right of the plaintiff in respect of the property. The plaintiff had therefore a right of suit under section 11 of the Code of Civil Procedure of 1882. Held also that it was not competent to the trustees to change Tengalai namans into Vedagalai namans in the temple. As the usage of the institution was Tengalai in character, a wholesale alteration in the form of namans displayed in the temple effected a change in the character of the predominating influence therein. Consequently, the defendant trustees who introduced the change, were liable to be restrained from making the change. Held further that there was no reason why the devotees of the Vedunta Desikar, whose image of stone was already in the temple, should be restrained from introducing a second and protable image of metal to be used if necessary in processional ceremonies, especially when the cost of such introduction was not met from temple funds. To permit it did not in any way change the distinctive Tengalai character of the temple. Nor was it likely to interfere with the worship of the Tengalais at the temple. Consequently the introduction of the metal idol could not be restrained by an injunction.

Suit cannot be regarded as one of a Civil nature merely because the facts constituting the cause of action are alleg-

ed to amount to breach of trust. If on examination it should appear that they relate merely to religious rites or ceremonies such questions may of course be gone into as stated in the explanation to s. 11 of the Code of Civil Procedure of 1882, if the right to property or to an office depends on them. Krishnasami Ayyangar *vs.* Samaram Singrachariar, 30 Mad. 158; 2 M. L. T. 69.

(8) *Suit by temple committee against temple servants for declaration as to their right to have the service performed by others* :—The plaintiffs held the office of members of the committee of management of certain temple under a sanad from Government, and received annually a certain sum of money for defraying the expenses of certain kinds of religious worship in the temple. The obligation attached to the office was to get the worship performed by hereditary officers or servants attached to the temple. Plaintiffs alleged that those failed to perform the worship owing to differences among themselves with the result that the duties owing to the idol were neglected and the funds in the hands of the plaintiffs remained unexpended. The plaintiffs, therefore, asked for a declaration of their right to disburse the funds, by getting the worship performed by suitable person or persons, in the event of the hereditary officers or servants of the temple concerned failing to perform it; and for an injunction to restrain those servants from obstructing the plaintiffs in the exercise of the right so declared. It was objected that the Civil Court had no Jurisdiction to try the suit, in which

the prayer was for a bare declaration of the plaintiffs' right either to perform by themselves or to get performed certain religious ceremonies in a temple, and there was no contest as to any right to property or to any office. Held, overruling the objection, that the plaintiffs were trustees of a public charitable trust, holding monies in their hands for disposal in a certain manner for certain defined purposes. An action would lie against them by Advocate General acting on behalf of the public, to compel them to a due execution of their particular acts of duty. The obligation cast upon them by the trust give them a corresponding right to disburse the funds, after getting the religious worship, for which those funds were intended, properly performed. Such a right was not less of a Civil nature, though the funds were to be appropriated to religious ceremonies. The Court was not called upon to enter into the adjudication of rites and ceremonies, but only to decide the rights of the trustees to fulful the trust unhindered. The facts of this case distinguish it from that in Vasudev *vs.* Wamanji, 5 Bom. 80. The latter was a case of bare religious worship. Here plaintiffs are trustees of a public charitable trust holding money in their hands for disposal in a certain manner for certain defined purposes. They hold the funds on behalf of the public for the benefit of the deity of the temple, who, in Hindu Law, is considered as a sacred entity, or ideal personality possessing proprietary rights. (Thakersey . Devraj *vs.* Hurbhum

Nursey, 8 Bom. 432, referred to). Trimbak Gopal Parichharak *vs.* Krishnarav Pandurang, 33 Bom. 387.

(9) *Suit against a trustee of a religious endowment to compel him to celebrate certain festivals* :—A suit was filed by persons interested in the worship of certain deities in a pagoda, against the trustee, charging him with breaches of trust and neglect of duty and praying that he might be compelled to celebrate certain festivals according to usage and otherwise perform the duties connected with the trust, there being certain endowments attached to the temple. The defendant denied the usage alleged by the plaintiffs, and contended that there were no funds in his hands specially dedicated to the celebrations referred to. He claimed that it was a matter of purely internal economy and management left to the discretion of the trustee to receive voluntary offerings from worshipers for the celebration of the festivals. He also pleaded that the suit related to religious ceremonies and processions and as such was not cognizable by Civil Courts. Held that having regard to the fact that funds voluntarily given to public religious institutions not only enrich the institutions but promote the interests of public worship, it must be regarded as part of the proper functions of the trustee to utilize such income for the purposes of the institution whenever it is available. It is his duty to accept the money and apply it for the specified purpose unless there are proper grounds for its rejection. Though a trustee may exercise discretion and cannot be charged with mis-

conduct if he acts with an absence of indirect motive, with honesty of intention and a fair consideration of the subject, he may be proceeded against if, from corrupt and improper motives, he refuses to allow voluntary contributions offered for purposes not inconsistent with the principles, rules or usages of the institution to be applied to those purposes. The courts are bound to restrain a trustee from injuring the interests of the institution under his charge by corruptly, arbitrarily or wantonly departing from the ordinary course of procedure in regard to essential or important matters connected with the institution. The ground upon which the Courts exercise such jurisdiction over him is that such departure on his part amounts to a breach of legal duty incumbent on him. Though the Courts cannot be called upon to decide questions of ritual or worship unconnected with Civil rights, it is perfectly competent for them to adjudicate upon such questions also when the adjudication is necessary for the determination of civil rights. Elayalwar Peddiar *vs.* Namberumal Chettiar, 23 Mad. 298.

(10) *Worshiper at a temple can sue for breach of trust of temple property* :—Worshipers or devotees of an idol are entitled to bring a suit, complaining of a breach of trust with reference to the funds or property belonging to the idol or appendant to its temple. Radhabai *vs.* Chimnaji, 3 Bom. 27; see also, Thackersey Devraj *vs.* Hurbhum Nursey, 8 Bom. 432; and Chintaman *vs.* Dhondo Ganesh Dev, 15 Bom. 612.

(11) *Worshiper's right to sue for property of a mosque* :—The worshipers at a public mosque can maintain a suit to restrain the superintendents of such mosques from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshipers in entering or leaving such mosque. Abdul Rahman *vs.* Yar Muhammad, 3 All. 636.

VI. RIGHTS OF BURIAL.

(1) The right of burial is a Civil right, and if the recitation of prayers at a particular spot in the mosque is a necessary part of the burial, and the plaintiffs are hindered from exercising their customary right in such matter, the interference by the defendants would be an invasion of their right, giving right to a suit cognizable by Civil Courts. In suits relating to purely rituals or religious observances, the Civil Courts have no jurisdiction, but the Courts are bound to enquire into questions of religion or ritual, which are material for determining Civil rights in dispute between the parties. When the matter is of a mixed spiritual and temporal character the question will depend upon the nature of connection between the facts and will be in fact whether the spiritual question is intimately connected with the temporal, as to be inseparable from it. If so, it would be the duty of the Court, in trying the Civil dispute, to inquire into the spiritual matter thus intimately related. Kooni Meera Sahib *vs.* Mahomed Meera Sahib, 30 Mad. 15.

(2) *Right of performing rites at the graves* :—A certain piece of land at Dharwar, which had 20 or 30 years previously been used as a cemetary by the Mahomedan Community there, was sold by the owner to defendant No. 4, who thereupon began to prepare the foundation of a house which he intended to build upon it. The plaintiffs, who are the members of the Mahomedan Community at Dharwar, filed this suit alleging that the land had been and was used for burying the dead, that it contained a *Makan* (monument) and graves of their relations and friends, at whose tombs they were in the habit of performing religious rites and ceremonies. They prayed for a declaration that the land was public property and for an injunction restraining defendants from obstructing them. Held that they were entitled to the declaration and injunction prayed for. By the custom of the country founded on a sentiment which may almost be described as universal, the ground in which human relics are interred is regarded as for ever sacred. The members of the family of the dead are in the habit of performing certain religious ceremonies at their tombs. The ownership of the soil may be vested in others, but the permission to bury in the land, granted, as it must be, subject to the custom of the community carried with it the right to perform all customary rites. Ramrao Narayan Bellary *vs.* Rustumkhan, 26 Bom. 198.

(3) *A claim to officiate as priest at the cremation ceremony ; agreement with Municipality to officiate as priest* :—Where a plaintiff clains a hereditary right to offici-

ate exclusively as a priest on the occasion of the cremation ceremony of all dead bodies brought for funeral to a particular place, the suit is maintainable as one of a Civil nature. A claim for a declaration that the plaintiff is entitled, to the exclusion of all other Brahmans of the class to which he belongs, to officiate as a priest at the cremation ceremony, is not maintainable under Hindu Law or under any customary right. A voluntary consent of the people to the employment of the plaintiff or his predecessors as cremation priest cannot confer upon him any exclusive right, and the continuance of this state of things, even for generations, cannot confer upon him a legally enforceable right. An agreement with the Municipal corporation that the plaintiff alone would officiate as a priest at the cremation ceremony is not specifically enforceable. Gourmoni Devi *vs.* Chairman of Pani Hati Municipality, 12 C. L. J. 74; 6 Ind. Cas. 864; 14 C. W. N. 1057.

VII. POWER OF A CASTE TO REMOVE A TRUSTEE OF ANY OF ITS CHARITABLE TRUST.

The question of the power of a caste to remove a trustee of any of its charitable trust is not a caste question. A caste has power to do what it likes for the internal regulation of its affairs; and all questions relating to them are caste questions. But where a caste deals with its own property and creates Civil rights in others, according to law, the rights and obligations arising out of such dealings do not appear to appertain to caste questions as such or the

internal regulation of its own domestic or social affairs.

They are legal rights and legal obligations enforceable by our Courts as much as if any entity such as a private person had been a party to their creation. The fact that the caste happens to be a party to the creation is merely accidental. Where a trust is created whether by a caste or by an individual, the same law applies to both. Chapsey *vs.* Jethabhai 9 Bom. L. R. 514.

VIII. RIGHT TO CARRY RELIGIOUS PROCESSIONS IN PUBLIC STREETS AND THOROUGH—FARES.

Persons of all sects and creeds are equally entitled to carry religious processions along public streets and thorough-fares and no particular sect can claim, on the ground of custom or immemorial usage, an exclusive right to carry processions through such streets. But the exercise of such rights must not interfere with the ordinary use of such streets by the public. Because it is a right recognized in law that persons may for lawful purpose, whether Civil or religious, use a common highway by parading it attended by music so that they do not obstruct the use of it by other persons. Passing in procession attended by music is a lawful purpose. If the procession be of a religious character the prohibition of it may be an interference with the free exercise of religion. Muthialuchetty *vs.* Bapun Saib, 2 Mad. 140.

The exercise of such right must be subject to such directions as the Magistrate may lawfully give to prevent

obstructions of thorough-fare or breaches of public peace; Partha Saradi *vs.* Chinna Krishna Ayyangar, 5 Mad. 304 at 309. An action for obstructing a procession is not maintainable without proof of special damage. Where however the illegal order of the Magistrate has been procured restraining such procession, a suit to declare the right to carry such procession is sustainable without such proof, the cause of action being the improper order so obtained by the defendants; Kandasami *vs.* Sabraya Mudali, 32 Mad. 478. In affording special protection to persons assembled for religious worship or religious ceremonies, the law points to congregational rather than to private worship, and it may fairly be required of congregations that they should inform the Magistrate or police at what hours they customarily assemble for worship, in order that right of other persons may not unduly be curtailed. No sect is entitled to deprive others for ever of the rights to use the public streets for processions on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night; Sundram Chetty *vs.* the Queen, Ponnusami Chetty *vs.* the Queen, 6 Mad. 203. The continued user by the public of a way raises a presumption that the way belongs to the public and that it has been dedicated by the owner for the public use. All members of the public have a right to carry religious processions through such public way in a lawful manner irrespective of the religion to which they belong; Mannada

Mudali *vs.* Nallaya Gouden, 32 Mad. 527. Because the word 'property' will apparently include a public right, and suits for the exercise of such rights are allowed to lie in Civil Courts, even though they involve the decision of religious questions. Thus in Mahomed Abdul Hafiz *vs.* Latif Husein, 24 Cal. 524, certain Shea Mahomedans, co-sharers with defendants of a village, sued for a declaration of their right to carry *alam* (a flag) with *mashk* (water carrier's bag) and arrow attached to it, along the streets and lanes of that village during the *Mohurrum* in the procession of a *tabut* and for damages for annoyance caused to them by the defendants having forcibly prevented them from doing so. The dispute was between the Shea and the Sunni Mahomedans. Held, that the suit was maintainable, as the plaintiffs were entitled to use the streets and lanes for any purpose not prohibited by law.

(1) *Suit for declaration of a right of marching in procession in a car* :—Plaintiff sued on behalf of themselves and other members of a religious assembly to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs. The defendants contended that the plaintiffs had no right to march along the road. Held that the suit was for a declaration of the right of an individual community to use the public road. Every member of the public and every sect has a right to use the public street in a lawful manner and it lies on those

who would restrain him or it to show some law or custom having the force of law abrogating the privilege. (Sada Gopachariar *vs.* A. Rama Rao, 26 Mad. 376 followed). Baslingappa *vs.* Dharmappa, 34 Bom. 571; 12 Bom. L. R. 586.

(2) The plaintiffs the members of the community of the Vadagalai sect of Vaishnava Brahmins, claimed the exclusive right to public worship of their idol and processions in its honour in the public streets of the village where they resided, and to prohibit the defendants, members of the Tengalai sect in the same village from publicly worshiping the Tengalai idol or carrying it in processions in the public Streets. The claim was based on the grounds (1) that the Vadagalais were the original owners of all the lands of the village and only allowed houses to be built and streets formed subject to the reservation that no worship or procession of a Tengali idol should be allowed in them, thus dedicating them to their own idol; (2) that in the alternative, they had by immemorial usage and custom the right to prevent such worship or processions in the streets. Held that the ownership of the village by the Vadagalais was not proved, nor any dedication of the streets exclusivly to their idol; and that no such custom as alleged had been established; the village was an ordinary riotwari village; the streets were public streets. All members of the public had an equal right to them. Sada Gopachariar *vs*, Krishnamoorthy Rao, 30 Mad. 185.

(3) *Right to procession of god through particular street*, :—The plaintiff claimed that the procession of an idol should be carried through their street in accordance with custom and deposed in his evidence that the Dharmakarta had no discretion in the matter even if the street became deserted. The defendant Dharmakarta, claimed to have a discretion to regulate the procession and contended that he acted *bona fide* in the interests of the temple and in accordance with the wishes of a large number of worshipers. It was admitted that since 1878 the plaintiff's street formed part of the customary route of procession. Held (by Chief Justice) that, the claim by an individual worshiper to have the procession of an idol carried along his street is not one cognizable by a Civil Court, that it was for the plaintiffs to prove that the custom was absolute and excluded all discretion of the Dharmakarta and that they have failed to prove it. Held (per Davies. J.) that, the claim to have a procession of an idol carried through a particular street being one to worship an idol at a particular place is cognizable by a Civil Court and that, though the Dharmakarta of a temple may increase the circuit of the procession of idol, he cannot omit from such procession any street through which according to *mamool* the procession had always passed. Nagiah Bathudu *vs.* Muthacharry, 11 M. L. J. 215.

IX. RIGHT OF PROPERTY IN A MOSQUE.

A mosque which has been dedicated to *God* cannot

be appropriated exclusively to or by any particular sect or denomination of Mahomedans. It is a place where all Mahomedans, whatever their views as to ritual may be, are entitled to go and perform their devotion as of right according to their own conscience. And when a right is recognized by law the suit will lie to enforce it under the principle enunciated by maxim *ubi jus ibi remedium.* Therefore apart from all questions of ownership every Mahomedan who has a right to use the mosque for purposes of devotion is entitled to exercise such rights without hinderance, and a suit by him for a declaration of his right by removal of the defendant's interference lies in Civil Courts. Jawahra *vs.* Akbar Husain, 7 All. 178. The rule is not confined to mosques. In Zafar Yab Ali *vs.* Bakhtawar Singh, 5 All. 497, a suit was held to lie for possession of a *takya* with an *imambara* and a graveyard, by cancellation of an hypothication thereof as well as of a decree given on the bases of that hypothication, and of a sale in execution of the decree. The plaintiff did not allege any title based on attending or having a right to attend the mosque, and the original Court decreed the suit on the ground that, every person is entitled to get public charitable property protected from the hands of the strangers : and this view is upheld by the High Court ; where it was observed that the plaintiffs as Mahomedans entitled to frequent the mosque and to use the other religious buildings connected with the endowment, can maintain the suit. It has also been held that a worshiper at a temple

or a shrine was entitled to bring a suit complaining of a breach of trust with reference to the funds or property belonging or appendant to the temple or shrine, and to restrain persons in charge of the same from acts believed to be contrary to the intention or purpose for which the temple, mosque, and the buildings appurtenant to them are built, or which were likely to obstruct or impede worshipers in their entrance or exit from them; Radhabai *vs.* Chimnaji, 3 Bom. 27; Abdul Rahman, *vs.* Muhammad. 3 All. 636. All such suits are of a Civil nature quite apart from the circumstances as to whether they are in any particular case cognizable by a Civil Court; as the cognizability depends not only on the nature of the suit, but on the recognition by positive law of the existence of the right violated, and of the right to the redress sought.

(1) *Exclusive appropriation of mosque by particular sect.* Amin *how to be pronounced*;—A mosque which has been dedicated to God cannot be appropriated exclusively to or by any particular sect or denomination of Sunni Mahomedans. It is a place where all Mahomedans, whatever their views as to ritual may be, are entitled to go and to perform their devotion as of right, according to their conscience. Those known as Wahabis are Sunni Mahomedans, although they may differ from the majority of the Sunni Mahomedans on particular points. These persons are entitled like other Mahomedans to perform their devotion in a mosque. There is nothing in the Mahomedan ecclesiastical law to limit the tone of the voice

in which the word '*amin*' is to be pronounced. So long as persons are Mahomedans they are entitled to enter a mosque and perform the worship and to say the word '*amin*' without any thing to restrain their tone or note of octave. But if the pronouncing of the word '*amin*' results in the disturbance of the peace, that will have to be dealt with under the criminal law. But where that word is pronounced aloud in the honest exercise of the conscience that it should be so pronounced, there can be neither any offence in the criminal law nor any wrong in the Civil law. Ata-Ullah *vs.* Azim-Ullah, 12 All. 494.

(2) *Right of worship in a mosque by different sects of Mahomedans* :—It has also been held that persons belonging to the Amil-bid-Hadi (or Wahabi) sect of Mahomedans are entitled to worship at mosque built for the use of and chiefly used by, the Hanafi sect, notwithstanding that differences exist between them in the matter of ritual; Abdus Subhan *vs.* Korban Ali, 35 Cal. 294. Any Moslem to whatever sect he may belong is entitled to offer his prayers according to his own ritual in any mosque, so long as he does not wilfully disturb or annoy the other members of the congregation. Nonconformity in matters of ritual on the part of any member of the congregation cannot lead to the forfeiture of his rights which belong to him as a follower of Islam. Adam Sheik *vs.* Isha Sheik, 1 C. W. N. 76.

(3) *Right to say 'amin' loudly during worship* :—Where a mosque is a public mosque open to the use of

all Mahomedans without distinction of sect, a Mahomedan who in the *bona-fide* exercise of religious duties in such mosque, pronounces the word *amin* in a loud tone of voice, according to the tenets of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or Civil wrong, though he may by such conduct cause annoyance to his fellow worshipers in the mosque. But any person, Mahomedan or otherwise, who goes into a mosque not *bona-fide* for religious purposes, but *mala-fide* to create a disturbance there and interferes with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. Jangu *vs.* Ahmad Ullah, 13 All. 419; Fazal Karim *vs.* Moula Baksh, 18 Cal. 448.

CHAPTER V.

CASTE PROPERTY.

Castes are capable of property and are entitled to protection in its enjoyment by a Civil Court; Pragji Kalan *vs.* Govind Gopal, 11 Bom. 534. These questions may arise in the form of management or custody of the caste property and its use and the right of a member of a caste to inspect documents and books of account relating to caste property.

I. MANAGEMENT OF CASTE PROPERTY.

To regulate how and under what circumstances and in which way caste property shall be enjoyed, who shall enjoy it, and when, is the function exclusively of the caste. The Court cannot regulate that, because it is a matter of internal economy of the caste. But once the caste has laid down regulations, the Court has jurisdiction to give effect to them. But the Court does not decline to give effect to the express wishes of the majority of a caste as to the management and custody of the caste property, which the minorty seek to set at naught by reason of the suit involving a caste question.

ILLUSTRATIONS.

(1) Vasudev Vithoba and others suing on behalf of themselves and the majority of the caste sought to remove the defendant Hariba from the management of the caste property. The defendant alleged that he had been duly appointed by the caste to manage. The Court directed a caste meeting to be held and it being found that the majority of the caste were in favour of removing the defendant to deliver up to the plaintiff's possession of immoveable and movable property of the caste, and restrained him from performing or interfering in the performance of certain ceremonies unless and until he was duly elected a member of the Panch of the caste. Vasudev *vs.* Hariba, Bombay High Court suit No. 168 of 1879.

(2) The plaintiffs and defendants were members of the Kachi Dassa Oswal caste of Hindus residing in Bom-

bay. The plaintiffs allege that by resolution of the caste unanimously passed at a caste meeting, a committee of which they were members, was appointed on behalf of the caste for the purpose of preventing Brahmins from attending the feasts of the caste in the caste oart in Bombay and that by a resolution unanimously passed, the members of the caste were strictly prohibited from feasting any Brahmins in the caste oart, and the committee was authorized not to allow any caste man wishing to feast Brahmins in the oart to use caste oart and caste vessels, and if necessairy to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste oart to which they had invited Brahmins, and prayed for an injunction and for a declaration that the above resolutions were validly passed and were binding on the defendants and on the caste. The defendants contended that the subject matter of the suit was a caste question, and not cognizable by the Civil Court. Held that the majority of the caste having arrived at a *bona-fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Brahmins from their oart, it was not a case in which the Court could say that the decision was so subversive of the interests of the majority of the caste as to amount to a practical confiscation of their property or denial of their rights, and the Court ought to give effect to it. It was also held that in matters relating to the management of the caste property and administration of its affairs the majority of the caste has

authority to control the minority. (see also, Lalsoonder *vs.* Sambhoo, 1 Borr. 419 ; Mootee *vs.* Kahandas, 1 Borr. 121; Pragji *vs.* Govind, 11 Bom. 534 ; Raghunath *vs.* Janardhan, 15 Bom. 599 at 610). The Court does not decline to give effect to the express wishes of the majority of the caste as to the management and custody of the caste property, which the minority seek to set at naught, by reason of the suit involving a caste question. But the Court will not by its decree enable the majority to make a tyrannical use of its powers. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or to give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature. Lalji Shamji *vs.* Walji Wardhman, 19 Bom. 507.

(3). In Krishnasami *vs.* Virasami, 10 Mad. 133, the suit related to the management of the common property of the members of a Hindu caste. The plaintiff's right to sue was denied on the ground that having violated the rule of the caste, he had been expelled from it. Held that it was open to the Court to determine whether or not alleged expulsion from caste was valid.

II. POSSESSION AND USE OF CASTE PROPERTY.

(1) In Lalji Shamji *vs.* Walji Wardhman, 19 Bom. 507, the Court gave effect to the resolution of the majority of the caste prescribing the mode in which the caste property should be used by the members of the caste.

(2) In Dulabh *vs.* Narayan, 4 Bom. H. C. R. A. C. J. 110, the plaintiff brought a suit to compel the defendants to allow them to use certain cooking utensils for caste purposes. The Court held that the question was not a caste question within the meaning of Bombay Regulation II of 1827 s. 21. Beyond these facts nothing appears on the report.

(3) The plaintiff alleging himself to be the Shettia of the Kapole Bania caste, sued Sir Mangaldas Nathubhai to recover possession of certain utensils and cooking pots of the caste, which the defendant had taken forcible possession of. The defendant claimed by virtue of authority given by the caste. It being found that the majority of the caste were in favour of the defendant having custody of the articles, the plaintiff's suit was dismissed. Gopaldas *vs.* Mangaldas, Bom. H. C. suit No. 367 of 1879.

(4) Sir Mangaldas as elected headman of the caste, filed a suit to recover from Gopaldas possession of some of the caste property. The Court passed a decree in the plaintiff's favour on the ground that he had been appointed Sheth of the caste by a majority, and was entitled therefore, to have the custody of the caste property. Sir Mangaldas *vs.* Gopaldas, Bom. H. C. suit No. 290 of 1880.

(5) In the case of Nimchand *vs.* Savaichand, Bom. S. A. 591 of 1865 (unreported), a Full Bench decided that a suit brought by some members of the caste to obtain a decree declaring them to be the proper recipients of half of the compensation granted by the Collector for the pur-

chase of certain shops belonging to the caste, raised a caste question which the caste alone could adjudicate.

(6) The above decision was followed by the Division Bench of the Bombay High Court in Girdhar *vs.* Kalya, 5 Bom. 83, in which a claim by members of one division of caste against the members of the other division of that caste, for recovery of half of certain vessels belonging to the caste or their value was held to be a caste question within the meaning of Bombay Regulation II of 1827 section 21, and cannot be made the subject matter of a suit cognizable by Civil Court.

(7) Similarly it has been held that a claim by a Mahajan or headman of a caste, to be entitled to the disposal of money paid, according to the custom of the caste, to the Panch on marriages, and brought against a member of the Panch, to recover money paid to him in accordance with that custom, is purely a caste question, and not within the jurisdiction of Civil Courts. Dodhusa *vs.* Khemchand, Bom. H. C. P. J. (1882) P. 377.

(8) In Abdul Kadar *vs.* Dharma, 20 Bom. 190, the facts were that the members of a caste entered into an agreement with one another, binding individually to make certain contributions to the caste funds for the purpose of paying of the debts of the caste. A suit was brought by the managers of the caste against some members to enforce the agreement, but it was held that it was a caste question. The person suing had no right of property or civil right, the agreement was voluntary and the caste alone can enforce it.

(9) A suit was allowed to lie, however, for certain lands on the ground that they were originally the property of the caste, but had been purchased by the members who had seceded (and since become re-united with the majority) and constituted a small section out of their own funds and for their own purposes. It was held that where certain property is the property of the caste, no suit will lie at the instance of some of its members in respect of it, for the question then would be between a caste and a section of it, and would be a caste question, and therefore not cognizable by Civil Court. But here the lands had been admittedly purchased by the members who had seceded, and constituted the small section, out of their own funds and for their own purposes; and the question to whom those lands now belong cannot be a caste question; unless indeed the small section itself could be regarded, and it has not been contended that it can, as a separate and distinct caste. Under these circumstances, it is for the Civil Court alone to determine who is now entitled to the property in dispute, although it may be incidently necessary for the purpose to inquire into the usage and practice, (if there be any) of caste sections, situated as the small section of this caste was, with respect to the property in question: Mehta Jethalal *vs.* Lalubhai, 12 Bom. 325.

(10) A suit was allowed to lie also by the priest of a caste against certain members, who had borrowed certain caste utensils from him with a promise of returning them, and refused to return the same. The decision proceeded

mainly on the ground that castes, as capable of property, are entitled to protection in their enjoyment, and may be represented by a group of their members, and the Bombay Regulation does not say that the Civil Court is not entitled to take cognizance of any case in which a question of caste rule or membership of a caste can be raised by way of answer to a claim of property or on a breach of contract; and the Civil Courts may discuss and deal even with caste questions where membership and the character of the member have been unjustly injured. Pragji Kalan *vs.* Govind Gopal, 11 Bom. 534.

(11) Similarly in a case where the Mahomedan community of a certain place purchased by subscription a certain cooking pot for their own use, and gave it in possession of their Panches. The defendants, the members of the same community, borrowed it, but refused to return it, after it had served its purpose. The Panches (plaintiffs) sued to recover it or its price. The practice was that if any one out of the community wanted it, he was to take it from the Panches, and to return it after it had served his purpose. Held, following Pragji *vs.* Govind, 11 Bom. 534, that the suit was cognizable by a Civil Court, Kasam valad Jamalbhai *vs.* Modub bhai Bhikambhai, Bom. H. C. P. J. (1896) P. 391.

From these decisions it may be gathered that where the suit is brought as to the property and raises a caste question, the suit cannot lie, if the person suing has no right to property. The property is there the property of the

caste, which is a separate entity from its individual members, and no individual member can say he has any right to any portion of it unless the caste has decided to give him any right to it. If for instance a caste has funds or property which is controlled by its members and one of the members is excommunicated, he can sue for his right to control it or to have a voice in its management with the other members, and a Civil Court can give him relief, if he finds that the order of excommunication was made arbitrarily, because he has a Civil right there which does not lose that character because a caste question is mixed up with it. Nathu *vs.* Keshavji, 26 Bom. 174.

III. WHO CAN SUE AND BE SUED FOR RECOVERY OF CASTE PROPERTY.

Where a caste man, who was appointed a guardian of certain property, sued in his own name (and not as a trustee), a member of another caste for recovery of a caste property lent to him for their caste's use, on his promising to return it, held that, as the defendant, acting on behalf of the caste, had pledged his personal credit, he could legally be sued without joining all the caste members. The caste itself cannot be sued. And when the principal can not be sued, then under s. 230 of Indian Contract Act, the Agent could personally enforce contracts entered into by him on the principal's behalf; Lodha Khubi Lachhman *vs.* Lodha Sukhlal Chhedi, 15 K. L. R. 106. The question whether the Honorary Secretary of a club or institution can be sued for a debt incurred on behalf of a club is de-

cided in the affirmative by the Bom. H. C. in Bhojabhai *vs.* Hayen Samuel, 22 Bom. 754. And although the case of N.-W. P. Club *vs.* Sadhllah, 20 All. 497, seems to express a different view from that of the Bombay High Court, yet it probably would not have differed, if the Honorary Secretary had pledged his personal credit.

IV. RIGHT OF A MEMBER OF A CASTE TO INSPECT DOCUMENTS AND BOOKS OF ACCOUNT RELATING TO CASTE PROPERTY.

(1) Where a member of a caste who was also a trustee of the caste property, was refused inspection of the books of account, documents, &c. by the President of the managing Committee of the caste, held that the injunction could be granted, restraining the President from refusing such inspection. Every member of the caste being interested in its affairs, has a right incidental to his membership, to every information, which the books, records and documents of the caste can give him, to enable him to discharge the duties he owes to the caste. It is a right similar to that of a partner in a firm to the partnership books and can be taken away from him only by an express caste rule, resolution or usage. But a trustee or a member of a caste has such rights to inspection, only for the *bona fide* purpose and in the interests of the caste, and not for any purpose hostile or injurious to those interests. Though a Court will not interfere with the jurisdiction and discretion of a caste as regards its internal purposes and management

with reference to which it is its own master to frame rules and regulations, yet it will interfere in favour of any individual member of the caste, as against any other member or members of it, where the Court is asked to give effect to any rule, regulation or usage of the caste, if the right claimed in virtue of such rule, resolution or usage, is a Civil right cognizable by the Court. In giving relief in such cases the Court so far from interfering with the autonomy of the caste, or encroaching upon the jurisdiction as to its internal affairs, recognises them by giving effect to its rule, resolution or usage. Chapsey Cooverji *vs.* Jethabhai Narsey, 9 Bom. L. R. 569, (reversed on appeal in 11 Bom. L. R. 1014.)

(2) A trustee can only claim inspection of documents relating to trust. A person who is a trustee has no legal claim to roving inspection of all caste documents, on the ground that some of such documents may possibly be found to contain entries bearing upon questions of expenditure having some connection with the trust. A right to inspection of documents belonging to a caste, existing in any person by virtue of his being a member of the caste, cannot be evolved by reference to English law. A Court will not grant a decree for the enforcement of a privilege granted by a caste, because such a privilege can be taken away by the caste at any time and the decree may be rendered nugatory. The proper tribunal in such cases is the caste itself and not a Civil Court. "Autonomy of a caste" must at least mean that, where rights to property are not involv-

ed, all matters of internal mangement must be left to the decision of the caste. Courts will not interfere when the rules of the caste make special provision of the question in dispute. Where there is a question in dispute between the caste and a section of the caste, it is outside the jurisdiction of the Court. The Hindu caste is an unique aggregation so wholly unknown to the English law that English decisions, concerning English corporations and partnerships tend rather to confusion than to guidance upon matters relating to caste. A Hindu caste may have points of resemblance to English corporations and partnerships but its points of difference appear more numerous and radical. Where according to well established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction, on the plea that the Court has inherent jurisdiction to do what justice requires for the parties before it. That plea cannot be urged in order to extend the jurisdiction of the Court, but to meet the objection often raised that in matters within the jurisdiction, the Court can only exercise such powers as are expressly given by the legislature and no others. To give rise to a cause of action for refusing the inspection of documents, which a person has a right to inspect, it must be established that an express demand was addressed to the proper quarter and was distinctly refused, or at least, that the other party showed by his conduct that he was determined not to do what was required. Jethabhai Narsey *vs.* Chapsey Kooverji, 11 Bom. L. R. 1014; 34 Bom. 467.

(3) *A suit for inspection of account books as members of Katchi Memòn Jamat from trustee of the caste funds and properties* :—The right to inspect account books kept in connection with caste funds and properties is not in any sense a caste privilege. It is a legal right. It is priliminary to right to assert a claim to property, and is incidental to right to recover property which may be lost to caste by misuse or mis-appropriation. A suit brought by plaintiffs on behalf of themselves and others as members of the Katchi Memon Jamat, to have full and free inspection of the books of account kept by defendants in their capacity as trustees of caste funds and properties, is maintainable in Civil Courts. It is the assertion of a pure legal right, and it in no way affects the *internal autonomy of the caste* or its *social relations.* Haroon *vs.* Haji Ahmed, 11 Bom. L. R. 1267.

The reason being that a caste is a combination of number of persons governed by a body of usages which differentiate them from others. Those usages may refer to social or religious observances, to drink, food, ceremonies, pollution, occupation, or marriage. Some of these usages may be common to others also. The caste is invariably known by a distinctive name for its identification; it has its own rules for internal management and has also got powers of exclusion; Muthuswami *vs.* Masilamani, 7 M. L. T. 17 ; 20 M. L. J. 49. There is no analogy whatever between a corporation as known to English law and an Indian caste. Clubs are voluntary associations to

which individuals subscribe for purposes of mutual entertainment and convenience. Clubs start with definite objects, they arise by agreement, and are governed by and subject to all the limitations of a written constitution. Fees are prescribed for membership, and the clubs may be dissolved at will by mutual agreement. If registered or incorporated under a statute the societies may be wound up by the Court. They may sue and be sued in their own name. Even where a society is neither registered nor a partnership, the Court has jurisdiction under certain circumstances, to wind it up and distribute the assets among the members according to their respective interests. Partnerships, on the other hand, are combination for profit and they are governed by special rules as to constitution, dissolution, and the rights, duties and powers of the partners, and their relations *inter se* and with the world. The caste system of India therefore differs from them in essential respects. Castes have a socio-religious origin; their functions also are partly Civil and partly religious or sumptuary, and they are governed principally by their own customs and usages. The principles governing the rights of members of caste to inspection of accounts of caste properties must therefore be governed by considerations different from those governing the rights of members of corporation, club, society or partnership seeking inspection of documents of them. Haroon *vs.* Haji Adam, 11 Bom. L. R. 1267.

CHAPTER VI.

EXCOMMUNICATION.

In the Bengal Presidency suit for restoration to castes were made expressly cognizable by Bengal Regulation III of 1793 s. 8, and were taken cognizance of by ordinary Courts; because the act empowered Civil Courts to take cognizance of all suits and complaints respecting rights connected with castes. Sudharam *vs.* Sudharam, 3 Beng. L. R. 91.

ILLUSTRATIONS.

(1) *Suit to be re-instated into the caste* :—The plaintiff was entitled to attend at some ceremonial in the house of G. where several others of the same caste met. He was turned out of the assembly without any cause, and he sued the defendants, praying that he might be re-instated into the caste. Held that the suit would lie. Sonaram *vs.* Obhoyram, Cal. S. D. A, (1847) p. 106.

(2) *Suit to be re-instated into the caste by a Mahomedan* :—The plaintiff sued the defendants to be re-instated into caste, alleging that they refused to admit him to their feasts. The parties were Mahomedans. The defendant pleaded that the plaintiff by rearing pigs and selling them, had excluded himself from caste, and was no longer a Mahomedan. Held that the plaintiff's act though improper, did not according to the Mahomedan law, subject him to expulsion from Mahomedan Community, and it was

declared that he was entitled to be re-instated into caste. Soon aoolla *vs.* Mohussun, Cal. S. D. A. (1848).

(3) *Suit for restoration to society*:—The plaintiff sued for a declaration of his right to be restored to the society, from which he was expelled by reason of a charge brought by the defendant against him of adultery, and for damages and compensation for cost of restoration to caste. Held that the suit was entertainable it being substantially a suit for character. Gopal Gurain *vs.* Gurain, 7 W. R. 299.

But even in Bengal the Courts could not compel Hindus against their will to ask other Hindus to their houses or their entertainments. Nor will a suit lie to enforce an agreement made by a person to belong for ever to a particular samaj or union or to recover damages for its breach. Joychander Sirdar *vs.* Ramchurn, 6 W. R. 325; Soodharam *vs.* Soodharam, 11 W. R. 457; Nytye Shaha *vs.* Shoobal Saha, 10 W. R. 349; Haronath Putter *vs.* Nitto paramanik, 22 W. R. 517.

In the Bombay Presidency a different view is taken of the caste question by section 21 of the Bombay Regulation II of 1827. This regulation applies only to the mofussil of the Bombay Presidency and not to the town and island of Bombay. This section was declared by the Local Laws Extent Act V of 1874, s. 5, to be in force in the whole of the Bombay Presidency excepting the Sheduled Districts. By a subsequent notification under the Sheduled District Act XIV

of 1874, it was extended to the province of Sindh. "Bombay Presidency" is defined by s. 3 of the Bombay General Clauses Act I of 1904 as meaning "the territories within British India for the time being under the administration of the Governor of Bombay in Council," and by s. 4 of the same Act, the definition, unless there is anything repugnant in the subject or contest, is made applicable to all the Bombay Acts passed before the commencement of the General Clauses Act.' From this it would appear that the section did apply to the Bombay High Court on its original side. But Chapter II of the regulation in which s. 21 occurs deals with "Zilla Courts" which term apparently excludes the Sudder Dewanee Adawlat. Hence it follows that the section has no force in the town and island of Bombay; Jethabhai *vs.* Chapsey, 11 Bom. L. R. 1030. There have been several decisions of the Bombay High Court on the Regulation, and of the different High Courts on the question of Civil Court's jurisdiction in caste matters, under s. 9 of the Code of Civil Procedure. The principle governing both the sections have been held to be the same; Nathu *vs.* Keshavji, 26 Bom. 174 at p. 189. In this case it has been observed that a suit for a mere declaration that an excommunication is invalid, and for restoration to the social privileges of a caste does not lie. Because when a man comes into Court asking for a relief against his caste or any of its members on the ground that having been unjustly excommunicated by them, he has been illegally deprived of his right to hold social intercourse

with the caste or its individual members, the relief he claims must be either by way of declaration that the excommunication is invalid, and that he is entitled to the social privileges of every member of his caste, or by way of injunction compelling his fellow caste men to admit him to those privileges, or by way of damages caused by his deprivation of the social privileges. To a declaration he is not entitled, because it cannot have any effect. The Court which grants it cannot compel the caste or its individual members to admit him to social privileges which those members, both collectively and individually are free to grant or deny at their option. Under s. 42 of Specific Relief Act, any person entitled to any legal character may institute a suit against any person denying or interested to deny his title to such character. The mere fact of a man being a member of a caste gives him no legal character. If other members of the caste expel him from it and decide to have no social intercourse with him, they do not thereby deny his title to any legal character. If A is a Brahmin, and all other Brahmins expel him, A may still call himself a Brahmin. The other Brahmins cannot object to that and are not interested in denying that. On the same ground relief by way of injunction is out of question. S. 54 of the Specific Relief Act allows a perpetual injunction only to prevent the breach of an obligation existing in favour of the person seeking it. What obligation is there on the part of one member of a caste to hold social intercourse with another member? As for damages there can be none

where they arise from an act which the law does not regard as the breach of any legal obligation.

The question therefore is entirely a caste question, and there can be no cause of action to give the Civil Courts any jurisdiction over them if all the plaint discloses is that the plaintiff is deprived of social privileges and dignities. It does not matter if the plaint in such suits alleges that the plaintiff has been excommunicated without having been heard in defence by his caste, or for the breach of a rule which never existed, or which the plaintiff as a matter of fact never violated. The Court cannot go into the merits of the case if there is no cause of action disclosed in the plaint, that is, if the only cause of action disclosed is the loss of dignity and social privilege.

However, where a member of a caste sues for a declaration that his excommunication is illegal, on the ground that the caste had no right to make a rule and expel him for its breach so as to deprive him of his social privileges, such as his right to be invited to dinner, or religious ceremonies, or observances by his caste fellows; held that, it is a caste question unconnected with property or legal right. The caste is the only tribunal to which a caste man, deprived of that privilege can resort, for the Court has no power either to compel the other members of the caste to give him the invitation or to mulct them in damages for not inviting him. It is a caste question unconnected with property or legal rights; Raghunath Damodhar *vs.* Janardhan Gopal, 15 Bom. 599. Similarly in Kanji Bavla *vs.*

Arjun Shamji, 18 Bom, 115, it was held that a suit for a declaration that an excommunication was illegal, sought on the ground that excommunication had deprived the plaintiff of his social privileges, could not lie.

But suits for a declaration that the excommunication is illegal, and the plaintiff is entitled to certain rights of property or office as a member of a caste, are cognizable by Civil Courts. Because the result of the excommunication is to deprive a man of his Civil rights; and the Civil Courts have jurisdiction to entertain suits brought to set aside such excommunication as illegal, and to inquire into the merits of the case. But even here the jurisdiction is limited. All that the Courts can inquire into is whether the order of excommunication was passed *bona fide* in accordance with natural justice, *i. e.*, after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorised by the caste to pass it, in accordance with either caste usage or rule, and for an offence against that usage or rule, which the man excommunicated did as a matter of fact commit. If these conditions are fulfilled, the Court must hold that the caste acted within its powers as a domestic tribunal with whose discretion it will not interfere, the Court in that case having jurisdiction to inquire from the point of view of the caste, not of the Court into the reasonableness or justifiable character of the rule for a breach of which the order of excommunication was passed; Advo-

cate General of Bombay *vs.* David Haim Devakar, 11 Bom. 185. Where the member of a caste has a right to go to a temple and perform worship, or where he holds an office to which property or emoluments are attached, or where, as such member, he is entitled to a right of a Civil nature, the right in question is the principal point for adjudication, and the caste question involved in it arises incidently. It therefore ceases to be a caste question within the meaning of Bombay Regulation II of 1827 s. 21. The Civil Court enquires into the caste question involved in it, only for the purpose of determining the Civil rights in dispute, for while a caste has every right to lay down rules under which that right is to be enjoyed, it has no right to deprive the man of that right arbitrarily without a *bona fide* regard to those rules. The result, then, is that a Civil Court can entertain a suit raising a caste question, provided a civil right of the person suing is in dispute and relief is claimed as to that right. Nathu Velji *vs.* Keshavji Hirachand, 26 Bom. 174; 3 Bom. L. R. 718.

ILLUSTRATIONS.

(1) *Expulsion from a club without opportunity for defending* :—The plaintiffs sued the defendants for removing his name from the list of members of the Bellary club, and to obtain an order that his name should be restored to the said list. It was held that as the decision of the committee was arrived at *bona fide*, the Court had no right to decide whether the pamphlet published by the plaintiff was or was not libel; and that as the plaintiff had no opportu-

nity for defending himself of the charge of writing the letters, his expulsion was illegal. The rule of law laid down in Wood *vs.* Wood, L. R. 9 Ex. 196, is that, "the committee are bound in the exercise of their functions by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct unheard, and without having an opportunity of making his defence." The rule is not confined to strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving Civil consequences in individuals. And again in Dawkins *vs.* Autrobus, 17 Ch. D. 615, Brett L. J. says: "If a decision is come to, depriving a gentleman of his position on such charge as must be made out here, viz., that he has been guilty of conduct injurious to the interests and character of the club, in my opinion there will be a denial of natural justice if a decision was come to without his having an opportunity of being heard." Gompertz *vs.* Goldingham, 9 Mad. 319.

(2) *Expulsion of a member of a caste under mistake of fact and without notice:*—InKrishnasami *vs* Virasami, 10 Mad. 133, the suit related to the management of the common property of the members of a Hindu caste. The plaintiff's right to sue was denied on the ground that having violated the rules of the caste, he had been expelled from it. Held that, it was open to the Court to determine whether or not alleged expulsion from caste was valid, and that if the plaintiff had not violated the rules of

the caste, but was expelled under the *bona fide* but mistaken belief that he had committed a caste offence, the exclusion was illegal, and could not affect his caste. A custom or usage of a caste to expel a member in his absence without notice given or opportunity of explanation offered is not a valid custom. Similarly it has been held that the members of a sect are entitled, subject to the rules made by the duly constituted authorities of the sect, to take part in the public worship of the sect,and if any one of them is wrongfully prevented from so doing, he is entitled to seek from the Civil Courts such remedies as they can afford him. Vengamutha *vs.* Pandaveswara Gurukal, 6 Mad. 151.

(3) *Expulsion without notice*:—In Vallabha *vs.* Madusudanan, 12 Mad. 495, an inquiry was held into the conduct of a certain woman suspected of adultery. She confessed that the plaintiff had had illicit intercourse with her, and thereupon they both were declared outcastes, the plaintiff not having been charged, nor having had opportunity to cross-examine the woman or to enter on his defence and otherwise to vindicate his character. In a suit for damages for defamation by the plaintiff against those who had declared him an outcaste, held that, the declaration that the plaintiff was an outcaste was illegal, and it having been found that the defendants had not acted *bona fide* in making that declaration, the plaintiff was entitled to recover damages.

(4) *Exclusion of a Brahman from inner shrine of*

a temple for marrying a widow :—The plaintiff, who was a Smarta Brahman, but had married a widow (whose first marriage had not been consummated), alleged that he had made a vow to present an offering in a certain temple, and the defendants who were the committee of the temple, had obstructed and prevented him from entering the inner shrine (where orthodox Brahmans usually make their offerings), asserting that he was disqualified to enter by reason of his marrying a widow contrary to Hindu *Sastras* ; and he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as Brahman, and for an injunction restraining the defendant from interfering with his exercise of this right ; held that, the right claimed was of a civil nature and within the cognizance of the Civil Court ; that the question to be determined was not the question of plaintiff's legal status, since a Brahman widow is at liberty to remarry under Act XV of 1856, but it was a question of caste status in respect of a caste institution ; and that in order to determine the above question, the Court must inquire (a) what was the usage of the temple as regards admission into the inner shrine for the purpose of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (b) whether according to such usage or presumable intention of the foundation those who secede from the caste custom as to re-marriage of women are outside the class of beneficiaries as regards the right of

admission into the inner shrine as above. Venkatachalapati *vs.* Subbarayadu, 13 Mad. 293.

(5) *Provisional sentence of excommunication by a spiritual head of the caste* :—It has also been held that the Civil Courts cannot interfere in matters relating to caste customs, over which the caste or the ecclesiastical chief has jurisdiction, and exercises the same with due care and in conformity to natural principles of justice and the usage of the caste. Thus in Ganapati *vs.* Bharati, 17 Mad. 222, the plaintiff's *guru* passed an order that the plaintiff should be excommunicated until he should attend before the *guru* and obtain an order for a consideration of the matter on account of which that order was passed, and the plaintiff sued to set aside that order; but the suit was held not to lie. Muttusami Ayyar and Best J. J. said "Whether the disciple should visit his *guru* or make his obeisance, whether the former should make the latter a *kanike* or fee by virtue of a spiritual relation, and whether the disciple should abstain from intercourse with persons already excommunicated by his *guru* are matters relating to the autonomy of the caste with which, as the head of the caste the first respondent has jurisdiction to deal according to recognized caste custom. This being so, the facts found show that first respondent exercised his jurisdiction *bona fide*. It is found that the fee demanded was neither unreasonable nor extortionate. It is not denied that the appellant did violate the duty which he owed to first respondent by refusing to visit him. The provisional nature of

the order shows that care was taken to see that the punishment by way of excommunication as ecclesiastical chief, first respondent was competent to inflict, was not more extensive than was necessary to enforce obedience to caste duties. As observed by the Subordinate Judge, if there has been no inquiry, its absence is due to appellants' contumacious refusal to attend for such inquiry. In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of the caste, the Civil Court cannot interfere, "

(6) *Excommunication by a swami exparte and without notice* :—The plaintiff, who was a *pujari* of a Jain temple, sued for an injunction to restrain the defendants from entering the temple and worship the idol, on the ground of their excommunication by the *swami* for misconduct. The defendant pleaded that they had been guilty of no offence for which a sentence of excommunication could be properly passed, and that the inquiry into their conduct was held by the Swami *exparte* and without any notice being given to him. Held that, the Civil Court had jurisdiction to inquire into the validity of the sentence of excommunication, and that it lay upon the plaintiff, who sought to enforce the sentence and by virtue of it to deprive the defendants of their civil rights, to prove that it was passed on justifiable grounds and after a fair and proper inquiry. Appaya *vs.* Padappa, 23 Bom. 122.

(7) *Excommunication by the head of the caste for*

misconduct:—Plaintiff was a Hindu widow of Modh Bania caste. Defendant was the head of the caste. He received anonymous letters imputing bad conduct to the plaintiff. He was requested to call a caste meeting to consider the matter; he did so, and placed the letters before the meeting, and it was then resolved to warn the plaintiff. The warning was, however, unheeded. So a second meeting was called by the defendant. Plaintiff sent her brother and sister's husband to the meeting in order that they might defend her. But they offered no explanation on her behalf. Witnesses were then heard and ten persons selected to decide what should be done. Defendant was one of those ten, and he communicated to the general meeting the decision they had come to, namely, that the plaintiff should be excommunicated. The meeting unanimously adopted this decision, and the defendant announced the decision, of the caste to the *gor* for him to promulgate. The plaintiff thereupon sued to recover Rs. 5249, as damages for defamation. Held that, the defendant was not guilty of defamation. He acted in the matter honestly, and as he was bound to act in the interests of the caste, and in discharge of his duties as leader of the caste. The caste having presumably acted in good faith and proceeded regularly according to the custom, the Civil Court could not interfere with its action, or examine the question on the merits. Keshavlal *vs.* Bai Girja, 24 Bom. 13; 1 Bom. L. R. 478; (see also, Vora Thaverbhai Bhaichand and others *vs.* Shah Ujamshi Tribhovan and others, 13 K. L. R. 265.)

(8) *Excommunication by Shettias of the caste* :— Plaintiffs and defendants were residents of Zanzibar and belonged to the Visa Oswal section of the Bania caste. The defendants were Shettias of the caste and as such had issued an order forbidding their caste fellows to attend a certain feast given by the members of the Lovana caste. The plaintiffs considering the order to be illegal and arbitrary, attended the feast. The defendants thereupon summoned a caste meeting, and without calling on the plaintiffs for an explanation, excommunicated them and notified the fact through the caste *gor* or priest at Zanzibar. The plaintiffs thereupon brought this suit against the defendants complaining of the excommunication and praying for a declaration that their excommunication was illegal and that they were still members of the caste and for damages for defamation. Held, with regard to the excommunication complained of, that no relief could be granted. No claim to property was involved. It was a caste question over which Civil Court had no jurisdiction under Bombay Regulation II of 1827 section 21 clause I. Held, as to the claim for damages for defamation, that the announcement of the caste decision was a duty incumbent on the defendants as Shettias of the caste, and was therefore privileged as far as it was communicated only to the members of the caste. The evidence did not disclose any communication beyond that limit and no evidence of malice was given. A suit brought by an expelled member for damages on account of loss of caste or character is cog-

nizable by Civil Courts. But here the jurisdiction is subject to the law that a libel to a man's position in his caste can give him no right to claim damages from any of his caste fellows, if they have acted *bona fide* for the protection of their caste interests in the discharge of their caste duty. Nathu *vs.* Keshavji, 26 Bom. 174; 3 Bom. L.R. 718.

CHAPTER VII.

DEFAMATION.

A defamation is an actionable wrong as well as an offence under chapter 21 of the Indian Penal Code. The party defamed by the resolution of the caste to which he belongs or by the decision of an ecclesiastical chief may either sue the party defaming for damages in a Civil Court, and may as well institute criminal proceedings against him.

I. CIVIL PROCEEDINGS.

In civil cases of this class, the person excommunicated is the plaintiff, and the defendant is the party who is alleged to have published the sentence of excommunication. If the fact of publication has been established, the defendant is *prima facie* liable for defamation, unless he is protected by privilege. The meaning of the word *pri-*

vilege when used to indicate protection to a defamatory communication is, that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be slanderous or libelous in any one else. There are occasions on which it is right that one should speak about another, and state fully and freely what he honestly believes to be the truth as to his character; such occasions are deemed in law to be privileged, and it is a defence to an action of defamation that the words were published on a *privileged* occasion.

In cases of expulsion from caste the privilege is only a qualified one, and therefore it is for the defendant to prove that occasion was privileged, that is, the defendant had a duty in the matter, or that the publication was for the common interest of the caste. The defendant is only entitled to the protection of the privilege, if he acts in good faith and without malice, if he uses the occasion in accordance with the purpose for which the occasion arose; Keshavlal *vs.* Bai Girja, 24 Bom. 13. He is not entitled to the protection of the privilege if he uses the occasion for some indirect or wrong motive. This casts upon the plaintiff the burden of proving the express malice or malice in fact. Malice may be proved by showing that the defendant knew the words were false, when he spoke or wrote them, or that they were uttered with the intention of injuring the plaintiff, or that there was a previous quarrel between the plaintiff and the defendant, or that the defendant was actuated by personal resentment or any other

wrong motive. It may also be proved by unnecessary wide publication or by the violent language used.

A communication injurious to the character of another, made from a sense of duty, legal, moral or social, and reasonably necessary for the discharge of such duty, and made with a belief in its truth, is privilged, but such privilege will be rebutted if plaintiff prove that the defendant made such statement maliciously.

Under certain circumstances, communications of defamatory imputations, even when the justification of truth is not pleaded or established, may be protected, either absolutely in the public interest or in a qualified way by the occasion, the relations of duty between the parties, and the manner and the circumstances under which the communication was made. The cases of absolute privilege are protected in all circumstances, independently of the absence of good faith. In respect of qualified privilege, it is only protected where the occasion is lawful, and is limited by the necessities of the case, if good faith is proved, but not where express malice or *mala fides* is proved. If the parties have a duty in the matter the occasion is lawful, and when such occasion is lawful and properly exercised, it is not for the defendant to prove good faith, but for the complainant to establish positive malice. When the occasion is lawful, and properly exercised to protect mutual interest the privilege is complete, and good faith is to be presumed unless express malice can be shown; Keshavlal *vs.* Bai Girja, 24 Bom. 13.; I Bom. L. R. 178.

If the plaintiff shows that he was excommunicated without being given an opportunity to enter on his defence and otherwise to vindicate his character, it is a case of absence of good faith on the part of the defendant, for the resolution declaring the plaintiff an outcaste cannot be said to have been arrived at with due care and caution; Vallabha *vs.* Madusudanan, 12 Mad. 195. Besides pleading privilege, the defendant may plead justification on the ground of truth, and where he proved that all the facts stated in a resolution excommunicating a casteman or depriving him of *man-pan* are true, the plaintiff must fail, as publication of true statements regarding an individual does not constitute a cause of action in a Civil Court, though if the publication be unjustifiable it may constitute an offence against the provisions of the Indian Penal Code. And in civil cases, if the defendant shows that the defamatory matter was true, the purpose or motive with which it was published is irrelevant. Where a person complains of a defamatory statement made to the caste, the first question to be determined is, whether apart from the truth or falsity of the statement, the communication is or is not privileged, *i. e.*, one made in the performance of a duty owed to the caste. If it is made in performance of such a duty for the protection and the interest of the caste, the question whether the imputation is true or not is immaterial. In an action for libel, the cause of action is not the writing but the publication, and the question is not whether the writing but whether the publication is on

privileged occasion. If the facts are not in dispute, the question whether the occasion is privileged is one of law for the judge to decide, but where they are in dispute they must be left to a jury, and when the jury have found the facts, it is for the judge to say whether they constitute a privileged occasion, and in dealing with the question of privileged occasion, the Judge has to consider, whether the defendant who published the defamatory matter had any interest or duty in connection with the subject. Aditram *vs.* Hargovind 6, Bom. L. R. 684.

ILLUSTRATIONS.

(1) The defendants were shettias of the caste, and as such issued an order forbidding their caste fellows to attend a certain feast given by the Lovana caste. The plaintiffs attended the feast inspite of the said order. The defendant thereupon summoned a caste meeting and without calling on the plaintiffs for an explanation excommunicated them. Held as to the plaintiff's claim for damages for defamation, that the announcement of a caste decision was a duty incumbent upon the defendants as shettias of the caste, and was therefore privileged as far as it was only communicated to the members of the caste. A libel to a man's position in caste can give him no right to claim damages from any of his caste fellows, if they have acted *bona fide* for the protection of their caste interests in the discharge of their caste duty. Nathu Velji *vs.* Keshavji Hirachand, 26 Bom. 174; see also, Keshavlal *vs.* Bai Girja, 24 Bom. 13.

(2) Where the caste exercises jurisdiction on a subject which interests its members, it is enough if it proceeds according to caste usage and exercises its power with due care and in accordance with custom. Ganapati Bhatta *vs.* Bharati Swami, 17 Mad. 222.

(3) A custom or usage of the caste to expel a member in his absence without notice given or opportunity of explanation offered, is not a valid custom. Krishnasami *vs.* Virasami, 10 Mad. 133; see also, Gompertz *vs.* Goldingham, 9 Mad. 319; Appaya *vs.* Padappa, 23 Bom. 122.

(4) If the plaintiff seeks to enforce the sentence of excommunication, and by virtue of it to deprive the defendant of his civil rights, it lies upon him to prove that it was passed on justifiable grounds and after a fair and proper inquiry. Appaya *vs.* Padappa, 23 Bom. 122.

(5) Where a minister in charge of a charitable institution, having promised to perform the marriage between a lady attached to the mission and the plaintiff, subsequently wrote to the lady, on further information supplied to him, regretting that he could not conscientiously have anything whatever to do with the marriage with the plaintiff, informing her at the same time, that he had not sought for information and made inquiries, but that facts had been brought to his notice which he had taken trouble to look into, and that he was forced to the painful conclusion that the plaintiff was altogether unworthy of her, held, that

such communication by a clergyman was a privileged communication, and that a suit to recover damages for defamation by the plaintiff could not be sustained, no malice having been proved. Where existence of privileged occasion is established, the plaintiff must give affirmative proof of malice, that is, dishonest or reckless ill-will in order to succeed. It is not for the defendant to prove that his belief was founded on reasonable grounds, and there is no difference in this respect between different kinds of privileged communications. To constitute malice, there must be something more than absence of reasonable ground for belief in the matter communicated. X. *vs.* Z. 83 P. R. (1908).

(6) Where in a suit for damages for defamation, the plaintiff alleges in his plaint that the defendant libelled him by using certain words which are capable of being understood as implying that the plaintiff is an outcaste. Held: it is open to the plaintiff to prove that the words were intended to convey that importation, having regard to the time and place and manner of utterance and all other relevant facts which may be duly proved. *Prayaschitam* by itself may not indicate any kind of excommunication. But *prayaschitam* for a caste offence, as a condition for re-admission into religious or social communion, certainly implies provisional excommunication which is removed when *prayaschitam* is performed. Words which are intended to bring about disastrous consequences resulting from the loss of caste, such as deprivation of social or religious communion, by imputing unworthiness to any person to continue

a member of his caste, are *prima facie* defamatory and give rise to a cause of action. A man may be excommunicated or otherwise punished for a caste offence, but that jurisdiction can only be exercised by the caste with due care and in conformity of the usage of the caste. Coopooswami Chetty *vs.* Durai Swami Chetty, 33 Mad. 67.

(7). The plaintiff employed a *naikin* to sing on the occasion of the *munj* of his grand-nephew, in direct contravention of a caste rule forbidding the employment of *naikins* on such occasions. Thereupon a meeting of the caste was held, of which notice was given to the plaintiff and a resolution was passed, which, after reciting the said rule, and breach thereof by the plaintiff, and the notice given to him, directed that the plaintiff should be deprived of the *man-pan* invitation. The plaintiff sued the defendants who were some of those present in the meeting, for damages for defamation. Held that the facts stated in the resolution being true, the plaintiff had no cause of action. Raghunath *vs*, Janardhan, 15 Bom. 599.

II. CRIMINAL PROCEEDINGS.

If a person is excommunicated by the caste or by his spiritual superior, and there is a publication of the sentence of excommunication, it is *prima facie* defamatory, as it is an imputation which lowers the character of that person in respect of his caste within the meaning of explanation IV to section 499 of Indian Penal Code. Because a person may suffer in his reputation by an imputation which lowers

the character of that person in respect of his caste; such would be *prima facie* the case if he is declared an outcaste for doing an act obnoxious to the orthodox community. And the burden would, therefore, lie upon the accused to prove that the occasion was privileged, and this privilege can be claimed under the 7th or the 9th exception to section 499 of Indian Penal Code. The 7th exception provides that it is not defamation in a person, having over another any authority conferred by law, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority extends. The 9th exception provides that it is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person. Thus a caste or a spiritual leader has authority over a member of the caste arising out of custom not forbidden by law in caste matters, and they may, therefore, pass any sentence on the conduct of a casteman in matters relating to the caste, or may excommunicate a casteman for a caste offence, and may communicate to the other castemen sentence of excommunication, and ask them not to associate with the outcaste, but this must be done in good faith.

ILLUSTRATIONS.

(1) *Privilege lost by unnecessarily excessive publication* :—A. having attended a widow remarriage (legalized by Act XV of 1856), S. his *guru* or spiritual superior published a notice declaring N. to be an outcaste, and

forbidding the disciples of S., and the public of the town in which N. resided, to associate with N. until he submitted to the prescribed penance and obtained a certificate of purification from S. S. also sent by post a registered *post-card* of similar purport to N. In consequence of indict of S., N. was prevented from performing vows in the temple, lost the society of her relatives, and was otherwise damnified. N. charged S. with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated would become an object of divine displeasure, and defamation. Held, that the first two charges were unfounded, but S. by communicating the sentence of excommunication by a registered post-card was guilty of defamation. In communicating to the complainant and to the members of the caste, the opinion, the *guru* had been invited to deliver and the sentence he had felt himself compelled to pass, and in directing the publication of that sentence to caste, the accused was protected by privilege under the 7th and the 9th exceptions to s. 499 of Indian Penal Code. Having spiritual jurisdiction over the complainant which he was entitled to exercise in virtue of a contract implied in the complainant's adherence to the sect, he cannot be held criminally responsible for the censure which he in good faith passed on the complainant's conduct. In communicating the sentence of excommunication to the members of the caste, he acted in good faith for the protection of their interests, for, by associating with an excommunicated per-

son, they would contract impurity. But no privilege can be claimed in these cases under the 1st exception, which provides that all imputation of truth made for the public good is not defamation; as the only benefit that may result from imputation in such cases is mere spiritual benefit by a particular sect. Besides the de nunciation of the act expressly sanctioned by the legislature, as the widow remarriage was by Act XV of 1856, could not be said to be conducive to public good. The communication of the sentence of excommunication by a post-card sent through the post was a publication in excess of the purpose for which the privilege was allowed, because the post-card might be read even by those who were not the accused's disciples, nor even of his caste, and therefore not privileged. The Queen *vs.* Shri Vidyashankara Bharathi, 6 Mad. 381.

(2) *False and uncalled for remarks*:—C. was put out of caste by a *panchayat* of his caste fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such *panchayat*, circulated a letter to the members of their caste generally, in which, stating that C. and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses or to eat with them; they made certain statements applying equally to C. or to such woman. Such Statements were defamatory within the meaning of s. 499 of Indian Penal Code. Held that, if such persons were careless enough to use language which

was applicable to C., they did so at their peril, and they could not escape the responsibility of having defamed C. by saying that they intended such language to apply to such woman. Held also, on the question whether such person had acted in good faith, that looking to the character of such letter, the circumstances under which it was written, and to the fact that C. had been put out of caste for the reason alleged, had such persons contended themselves with announcing the determination of the *panchayat*, and the grounds upon which such determination was based, they would have been protected; but inasmuch as they did not so content themselves but went further and made false and uncalled for statements regarding C., they had rightly been held not acted in good faith. Empress of India *vs.* Ramanand, 3 All. 664.

(3) *Indiscriminately publishing a defamatory statement* :—A. a Brahmin went to England with his wife and family, and by doing so committed a caste offence. He was therefore expelled from the caste, for having committed the sin of crossing the sea. D. the brother-in-law of A. associated with A. and apparently therefore committed an offence against caste. He, however, was re-admitted into caste by the executive committee of the caste, after performing certain expiatory ceremonies. The accused, who formed a faction of the caste, objected to it, and they, after an interval of six months distributed *in the Bazar to all classes of public* printed papers in which the complainant was described as a *doshi*, or sinner, which

signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. Held that the accused had not acted in good faith. To bring this case under exception X of s. 499 of Indian Penal Code, it must be proved that the accused intended in good faith to convey a caution to one person against another, that such caution was intended for the good of the person to whom it was conveyed, or of some person in whom that person was interested, or for the public good, and that the caution should be conveyed by the proper means. The defamatory statement was in this case distributed *indiscriminately*. It cannot be said that it was necessary to caution every pariah who received a copy of the statement against associating with certain Brahmins, or to inform all Madras that complainant was a "*doshi*." It must also be borne in mind that D. had been readmitted into caste by at least a portion of the Brahmin Community, and it would be intolerable to allow a few dissentients to circulate defamatory statement about a person because they believed that in a caste dispute a wrong decision was arrived at. Thiagaraya *vs.* Krishnasami, 15 Mad. 214; 2 M. L. J. 12.

(4) *A person in authority over another is a question of fact, burden of proof* :—The question whether the accused was a person in authority over another is a question of fact, and he who relies upon the 7th exception must establish it. So where the accused who was the *guru* of the caste to which the complainant belonged circulated

a letter in the latter's village forbidding social intercourse with the complainant's wife, as she had been caught with a man of lower caste, it was held that the imputation was made in good faith for the protection of the social and spiritual interests of the community of which the accused was the *guru*, and so far as it implied a censure on the conduct of the complainant's wife, it was justified by that authority which the accused was vested with as the spiritual head of the community, and therefore the case came within the 7th exception to s. 499. Basumati Adhikarini *vs.* Budram Kolita, 22 cal. 46.

(5) *Headman of the caste issuing defamatory notice* :—The accused who was a head man of the caste of the complainant, issued a notice to the members of that caste, intimating that he had received a complaint that the complainant's daughter had committed adultery with a certain person named, and that he should therefore appear to answer the charge. The notice was issued in good faith on a complaint received, and the Court held the accused protected by the 7th exception to section 499 of Indian Penal Code. Queen *vs.* Bhikaji; Bom. H. C. Cr. R. (unreported), No. 39 of 1888.

(6) *Letter written to protect religious interest of the writer* :—A letter was written by a Brahmin to the Brahmin community of the neighbourhood. The general purport of the letter was to impute unchastity to a Brahmin by name Trimbak and a low caste woman, the complainant in this case, with reference to a rumour that they had

adulterous intercourse together. Held that the object of the accused having been to obtain a decision from the Brahmin community of the neighbourhood on a matter affecting his own religious interests and that of the Brahmin community, the accused is entitled to benefit of exceptions 8 and 10 of section 499 of the Indian Penal Code, if the letter was written in good faith. Reg. *vs.* Kashinath Bachaji Bagul, 8 Bom. H. C. R. Cr. Cases 168.

(7) *Untrue statement not for the public good* :—The accused being charged with defamation, in having publicly charged a woman, the complainant, before a member of her caste people of being pregnant by adultery ; held the charge was found to be unfounded and the publication of the charge was not for the public good. In reg *vs.* Kashinath 8 Bom. H. C. R. Cr. Cases, 168, the woman's name was not mentioned and the imputation was against the man, not against her. That distinguishes that case from the present one. There is no doubt the imputation would lower the character of the complainant in respect of her caste. The accused was bound to show that it was made in good faith and for the public good. The manner of publication involved unnecessary publicity and this fact coupled with the total absence of affirmative proof of the charge negatived good faith. Queen Empress *vs.* Pudman, Bom. H. C. Cri. ruling, No. 33 of 1889.

(8) *Excessive publicity given to an imputation* :—The publicity given to a person outside the privilege is held to destroy the protection to which the imputation is

otherwise entitled. So if a libel is transmitted, written on a post card, or unnecessarily transmitted by the telegraph, the Court presumes that the person other than those to whom it was addressed read it, though this presumption may be rebutted by the plaintiff. Thus in the case of King Emperor *vs.* Shivgovda, 3 Bom. L. R. 188, one Uma left her husband and married B, which marriage was declared void by the headman of the caste. Some years afterwards another headman of the caste declared the marriage valid. This decision was challanged by certain members of the community who addressed their protest to him asking him to rescind that decision, but he took no notice of their protests, whereupon twelve of the dissentients published a notice in a local paper to the effect that B. having kept a concubine named Uma, had had offsprings by her. They were convicted of this offence, but they pleaded that such notices were customary and the publicity as to Uma's status was for the public good, and that at any rate two of the accused were directly interested in contesting the legitimacy of B's sons born to him by Uma. But the Court held that the publication was not for the public good, though it was for the good of the caste; but in that case the publication in a public print reached a circle who could, in no way be interested in the question, and that therefore the accused had been rightly convicted of the offence of defamation.

(9) *Privilege may be forfeited by the manner of the publication* :—The censure may be sincere, but it must be

passed in good faith, that is to say, passed with due care and caution, having regard to the circumstances and necessity of the occasion. For instance, a statement may be privileged, but it may forfeit that privilege by the manner of its publication. So where the accused openly declared that he had seen the complainant having connection with a *pariah* woman, whereupon he was *outcasted*, and the facts were such that he *bona fide* believed that he had seen what he asserted, but the Court held his communication unprivileged, because he *violently* and *publicly* talked about the complainant and in a manner quite unnecessary and improper. Palani Asari, (1882), 1 Weir. 613.

(10) *The caste procedure is not strictly Judicial* :— In matters relating to caste and within the exclusive cognizance of the caste assemblies, the Court does not apply the same rigid test which it does in judging of the legality of its own procedure. It is clear that the Court will not interfere on the ground that the procedure of such assemblies is not strictly or even approximately judicial as to the manner of recording either evidence or resolutions, when there is no evidence that according to custom or otherwise it is necessary to keep such record. And for the same reason it is not open to the Courts to determine whether or not the evidence on which the caste assembly acted is such as a Court of Justice would act upon. Hence where a caste panchayat declared the complainant to be a *Rangari* and that he was not of the caste of the *panches*, the latter could not be convicted of the offence, merely because

the decision was erroneous and made without sufficient inquiry, if it was a decision given in good faith, that is, after such inquiry as was reasonably necessary and sufficient, or in otherwords, if the inquiry was *bona fide* and not a blind for securing against a prosecution. Such would be the case, if the accused hastily convened a *panchayat* of picked men to outcaste the complainant behind his back and without notice to him. Salar Manaji *vs.* Herojee row, (1887) 1 Weir 614.

(11) *Statements made in good faith for the protection of the interest of the person making it:*—A *panchayat* was assembled at the instance of the relatives of the complainant to inquire whether the accused Govindappa Nayak had any justification for applying an injurious epithet 'pariah dog' to the complainant. Being required to justify himself Govindappa Nayak made the statement that he had used the epithet with reference to certain information given to him by one Antony as to the complainant having once three years ago had connection with the *pariah* woman. Held that such statements were made in good faith for the protection of the interest of the person making them by way of explanation and were therefore privileged; in the matter of Govindappa Nayak and Antoni, 7 Mad. 36.

(12) *Publication made with due care and attention*:—There is a dividing line between the passing of a resolution in a caste meeting, and its communication by the authorities of the caste to its members in the discharge of a social duty. If any member of the caste publishes to

all its members a caste resolution in such discharge of duties, the law will hold the occasion of the publication to be privileged. The member who publishes it, is bound to publish it, and the members of the caste have an interest in hearing it. But there must be a good faith on the part of the member who publishes it, that is, it must be proved that the publication was made with due care and attention. One test of good faith is whether the circumstances of the case show that the accused made the imputation having reasonable grounds to believe it to be true. In a case where the complainant was excommunicated at a caste meeting, the publication was of that fact only, and it was made only to the members of the caste. The accused were more or less illiterate men and did not appear to have known that the sentence of excommunication pronounced at the caste meeting was improper because the complainant had not been heard in defence. In publishing it they appeared to have acted from what they honestly but wrongly believed to be a sense of duty to the caste. There was no malice on their part. Upon these facts good faith was held proved. Emperor *vs.* Virji Bhagwan, 11 Bom. L. R. 638; Shibo Prasad Pandah *in re*, 4 Cal. 124.

(13) *Publication of a false statement is no defence* :—Where the accused published a circular, purporting to say that, at a *panchayat* held at a certain place, it was resolved that the complainant, who had been to England, was not to be taken into caste, and that those of

their community, who associated with him could be taken into caste only on their undergoing a penance and on consenting to give up all connection with the complainant, and where it was found that no *panchayat* was actually held and the publication was not made in good faith, held that, the accused were rightly convicted of the offence of defamation. The publication of the circular lowered the character of the complainant in respect of his caste, as it represented the complainant to be one whom to associate with would entail excommunication on the members of the brother-hood associating with him. Emperor *vs.* Mukandram, 6 A. L. J. 472.

(14) *Calling a Parsutia kaish a 'Kori chamar'*:—The accused referred to the complainant who was a *Parsutia kaish* as a "*Kori chamar*" with the result that none of the priests attended the religious ceremony which had to be performed at the complainant's house. Held that the accused was guilty of the offence under s. 499 of Indian Penal Code. Bechcha Paragwal, 6 Ind. Case. 876.

(15) *Denouncing of a Brahmin for providing alcoholic refreshment at a wedding reception* :—In order to establish the offence of defamation, it is not necessary to prove that actual harm has been caused. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputation made by him would harm his reputation. Where a complainant was described as a man with whom not even Turks, but alone Brahmins,

could associate, and the wedding of his daughter was characterized as sinful carnival worthy of perdition a moral crime involving disgrace, degradation and degeneration; it was held that the language used was unrestrained, the object of the writer being to hold the complainant upto public execration. To entitle a person to the benefit of exception I, the statement made must not only be proved to be true, but it must be shown that their publication was for the public good. Public good is the good of the general public as contra-distinguished from that of an individual. The denouncing of a Brahmin for providing alcoholic refreshment at a wedding reception, for those of the guests who desired to partake of such beverages, is not "for the public good." V Madanjit *vs.* Emperor, 9 Ind. Cas. 776.

(16) *Publication of excommunication* :—The defendant the *gumasta* of a *guru* or priest, published an order of his master excommunicating the complainant from his caste. The letter containing the excommunication merely stated that the complainant disobeyed some one and treated him with disrespect. Held that the letter publishing the excommunication contained no expression defamatory *per se*. *In re*. Balambal, 1 Weir. 574; 6 Mad. H. C. R. App. 46.

(17) *Declaration of inferiority of one's caste* :—An expression of opinion by the members of the caste that their caste is superior to another caste is not such an imputation as would warrant a conviction under s. 500 of

Indian Penal Code. Where consequent upon such declaration, the members of the other caste are put to inconvenience by the refusal of the village servants to serve them, the remedy is a suit for damages. Venkata Reddi, 1 Weir. 575.

(18) *Accusation preferred to the head of the caste*:—Where a person makes to the head of the caste an accusation against another, the burden of proving good faith in respect of such accusation lies on the accused, and, in determining whether he so acted, it is material to consider who the accused was and whether he had any concern in the matter which would justify him, in making the allegation. The accused must also show that he had reasonable and probable cause for making the same. Venkatapparai *vs.* Ibrahim Beary, 1 Weir. 608.

(19) *Defamatory statement made for protection of one's own interest* :—The headman of the caste to which the complainant and the accused belonged had prohibited the other members of the caste from holding intercourse with the complainant, the violation of which might have subjected the offenders to caste penalties, but the complainant was not declared out of caste. The complainants' niece, in ignorance of the prohibition invited the complainant who was also ignorant of it, to a family ceremony. The accused to whom the sentence of the headman was known, observing the complainant among the guests, asserted that she had been put out of caste and insisted that she would retire. In making the imputation they were

not influenced by any personal malice towards the complainant. Held, that their statement was only inaccurate and not untrue, and that their conduct proceeded from a desire to secure themselves and their fellow-guests from caste inconveniences. Chalil Kothali, 1 Weir. 609.

APPENDIX I.

OTHER CRIMINAL CASES ARISING FROM SOCIAL DISLIKE OR FROM MATTERS RELATING TO CASTE DISPUTES.

(1) *Statement made by a trustee of a temple that the complainant was convicted of theft of idols* :—Where the trustee of a temple wrote in a post-card that the complainant, the *archaka* of the temple, was convicted some years previously and had been sent to jail for theft of idols belonging to the temple and the card was received by the complainant in the ordinary course of post, and the statement was published in order to forestall the complainant from setting up his rights in regard to joint *archakaship*, held, that the accused was not guilty of defamation, inasmuch as the statement was true, made for the protection of interest of the temple, and also because it was no more than the publication of the result of the proceedings in a Court of Justice, which is specially declared to be no defamation under exception IV of s. 499 of Indian Penal Code. Singaraju Nagabhushanan, 26 Mad. 464.

(2) *Threat of excommunication not amounting to an offence* :—Where a Roman Catholic was threatened by the ecclesiastical authority that if he persisted in a certain course of conduct he would be excommunicated and had been excommunicated, held that the ecclesiastical authorities would not be liable to be punished under section 508 of Indian Penal Code inasmuch as a person who was excommunicated would not be-

come an object of divine displeasure by the act of the priest pronouncing the sentence. In the matter of the petitions of Paul *de* Cruz and Cruzand John Raymond Biber, 8 Mad. 140.

(3) In Reg. vs. Dharma, (unreported Criminal Ruling of the Bombay High Court of 1870), the accused told the complainant the member of their caste, that he should give up his field or else they would put him out of caste. On his refusal to do so, they called a meeting of the caste at which the complainant did not attend and at which his excommunication was pronounced. Held that this did not amount to criminal intimidation within the meaning of section 503 of Indian Penal Code. In that section the offence is thus defined. "Whoever threatens another with injury to his person reputation or property..... .....commits criminal intimidation." The word injury is defined in section 44 to denote "any harm whatever illegally caused to any person, in body, mind, reputation, or property." section 43 provides, among other definitions, that every thing which provides ground for a civil action is illegal. If the words uttered by the accused furnished to the complainant a ground for a civil action, they are guilty of criminal intimidation. If they do dot then the accused are not guilty. Under Bombay Regulation II of 1827 section 21, the Civil Courts have always refused to inquire whether the expulsion from caste was legal or illegal, although they have awarded damages to persons who are entitled to be invited to caste dinners and were omitted. The complainant in this case therefore could not have brought a civil action to decide whether he was rightly or wrongly expelled from caste.

(4) *Threatening to bring a matter before caste* :—It has also been held in Queen Empress vs. Fakirappa, (unreported Criminal Ruling of the Bombay High Court of 1882), that a mere

threatening to bring a matter before the caste in order to get one expelled does not amount to criminal intimidation. But in this case there was not merely a theft but a proclamation that the complainant was put out of caste. That, if false, was defamation. But threatening to bring the matter before the caste in order to get one expelled was not criminal intimidation. The caste might receive a complaint and expel a member if satisfied that he had committed a caste offence. A false complaint would be defamation and a malicious expulsion would perhaps afford ground for a civil action.

(5) *Mahomedan subjected to social denunciation by a Hindu* ;—Anything in the 4th explanation to s. 499 of Indian Penal Code does not refer to social dislike in connection with the caste and calling of the accused. For instance, the killing of kine is wholly revolting to the religious and social instincts of Hindus. Where, therefore, the accused gave out that a Mahomedan who lived amidst Hindu surroundings, had killed a cow in his own compound, and whereupon he was subjected to social denunciation, and who then complained of the offence, it was held that explanation IV did not bring this case within the definition of offence, inasmuch as such imputation could not be said to lower his moral and intellectual character, or to lower his character in respect of his caste and calling or to lower his credit. It was merely an imputation that he had done an act harmless in itself, but annoying to his neighbours. (Sikandarkhan vs. Jammu. 5 C. P. L. R. Cr. 53). The case would have been, of course, different if the accused had charged the complainant with killing a pig instead of a cow, in which case, he would have suffered in respect of his caste.

(6) *Swearing on cow's flesh* :—The accused, while his caste people were sitting to dine at the complainants' house, called

out in hearing of all, that they would be eating cow's flesh if they took food without them, which made them leave their dishes untouched, held that the accused could not be convicted under s. 298 of Indian Penal Code. Emp. vs. Dagadi, unreported Criminal ruling of the Bombay High Court of 1892.

(7) *Wilful polution of a food served at a caste dinner* :—Certain Hindus present at a caste dinner had set down to partake of the food which had been served to them, when certain other members of the caste came, and after telling those who were sitted to move to another place, which they refused to do, threw down a shoe amongst the men who were seated, and who in consequence left the food untouched ; held that the person who threw the shoe could not be convicted under s. 298 of Indian Penal Code. Emp. vs. Motilal, 24 All. 155.

(8) *Remarriage of a Hindu having Christian wife alive* :—A Hindu convert to Christianity married a Christian woman according to rites of the Roman Catholic religion. Subsequently, and during the life time of his Christian wife he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class to which the parties belonged. Held, that as the accused had renounced Christianity at the time of or some time before the second marriage which was contracted not according to Christian rites, but according to rites prevalent among Hindus of the class to which the accused, a *pariah*, belonged, the offence of bigamy could not be established. Emperor vs. Antony, 33. Mad. 371.

(9) In Reg. vs. Sambhu, 1 Bom. 347, it was held that the Courts of law will not recognise the authority of a caste to declare a marriage void, or to give permission to a woman to re-

marry, and a *bona fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge under s. 494 of Indian Penel Code. So a Hindu who has been deprived of caste does not thereby forfeit his rights as guardian to the custody of his daughter. Kanahi Ram vs. Biddya Ram, I All. 549 ; Kanhsra vs. Jorai, 2 A. L. J. 606.

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SUITS OF CIVIL NATURE—see Chapter IV.